

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2374 (Kiley and Quirk) – As Amended March 15, 2018

[Note: This bill is doubled referred to the Assembly Judiciary Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Postsecondary education: Free Speech on Campus Act of 2018.

SUMMARY: Requires a campus of the California Community Colleges (CCC) or the California State University (CSU), and requests a campus of the University of California (UC), to make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression; specifies that the statement be supplemented with educational programming, including, but not limited to, online resources, part of student orientation or classroom instruction, or delivered in another setting where it will effectively reach students. Specifically, **this bill**:

- 1) Makes numerous declarations and findings, including, but not limited to:
 - a) The First Amendment to the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
 - b) The First Amendment prohibits, with narrowly defined exceptions, governmental entities such as state universities from restricting free speech; and,
 - c) Several campuses of the CSU and the UC have adopted free speech statements.
- 2) Creates the Free Speech on Campus Act of 2018.
- 3) Requires a campus of the CCC or the CSU, and requests a campus of the UC, to do all of the following:
 - a) Make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression and specifies that the statement shall include assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression;
 - b) Supplement the statement required pursuant to (3)(a) above, with educational programming, including, but not limited to, online resources; specifies that the educational programming may be part of student orientation or classroom instruction, or may be delivered in another setting where it will effectively reach students; and, the educational programming shall include all of the following:
 - i) Descriptions of campus policies, procedures, and protocols that protect freedom of expression and prohibit exclusionary behavior;

- ii) Lessons that teach and encourage the expression of a wide range of views in a productive and respectful manner; and,
- iii) Lessons that inculcate an understanding of the First Amendment to the United States Constitution and its role in supporting the academic mission of the campus.

EXISTING LAW:

Federal law.

Prohibits Congress from making any law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances (First Amendment to the United States Constitution).

State law.

- 1) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. Existing law prohibits a law from restraining or abridging liberty of speech or press (California Constitution, Article I, Section 2).
- 2) Prohibits the UC Regents, the CSU Trustees, the governing board of a community college district, and an administrator of any campus of those institutions, from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction (Education Code (EC) Section 66301).
- 3) Provides that (2) and (3) above do not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally. Authorizes a student to commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon a motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section (EC Sections 66301 and 94367).
- 4) Requires the governing board of a community college district to adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities. Provides that such rules and regulations shall not prohibit the right of students to exercise free expression, except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited (EC Section 76120).

FISCAL EFFECT: Unknown

COMMENTS: *Free speech and codes of conduct.* Freedom of speech on public college and university campuses is allowed within the confines of codes of conduct and time, place, and manner restrictions. Institutions cannot discipline a student for engaging in a free speech activity, but can discipline a student if the free speech activity crosses into unlawful behavior, or otherwise violates the institution's time, place and manner restrictions.

Postsecondary educational institutions maintain time, place, and manner restrictions to ensure safety, security, and order. As an example, CSU, Sacramento's policy states:

"A. *Overview:* All activities set forth in this policy are subject to these general time, place, and manner restrictions as specified below:

B. *Time:* At all times except for non-University affiliated organizations and individuals, who are limited to normal operating hours.

C. *Place:* Freedom of expression activities may take place anywhere on campus with the following exceptions: inside parking lots and structures, inside University buildings, and near any location in which instructional, educational, and/or official business activities are being conducted (generally within 20 feet). Popular locations for freedom of expression activities are the Library Quad, Main Quad, and South Green.

D. *Manner:*

- 1) Freedom of expression, which includes marches and/or moving protests, must be conducted in a manner that (1) shall not interfere with or obstruct the free flow of pedestrian or vehicular traffic; (2) shall not interfere with or disrupt the conduct of University business; (3) shall be carried out without creating excessive noise by use of a device; (4) shall not unreasonably interfere with classes in session or other scheduled academic, educational, co-curricular, and/or cultural/arts programs; (5) shall not promote an unlawful end, such as promoting actual violence or bodily or property harms, terrorist threats, defamation, obscenity, and false advertising; and (6) shall not violate any federal, state, or local safety code, such as regulations set by the State Fire Marshal, or University policy.
- 2) For any public meeting, demonstration, rally, etc., held on University grounds, advance reservations are advised to avoid conflict with previously reserved activities. Use of space shall not conflict with prior reservation of that space for another use. (Casual or unscheduled users will not be allowed to interfere with scheduled, organized, or traditional use). Use of any campus buildings for this purpose requires advance reservations and is restricted to non-profit organizations or student organizations, and faculty-, staff- or administration-sponsored events. To maintain access and safety, the use of ramps, entrances, breezeways, hallways, and other pedestrian pathways is not authorized for such purposes.

- 3) The scheduling process will ensure order and adequate preparation for the event and a suitable space for the intended use and expected attendance. Policies and procedures for reserving campus facilities are available in the Student Organizations & Leadership office and the Office of Space Management. Requests for student organization-sponsored events shall be directed to the Student Organizations & Leadership office. Requests for faculty-, staff- and administration-sponsored, and community events shall be directed to the Office of Space Management or the office that oversees reservations for that particular venue (e.g., requests for University Union space must be made through the University Union Events Services Office). Please consult the University's Office of Space Management's website for information relating to the appropriate office to contact to make reservations for a particular location on the University's campus" (<http://www.csus.edu/umannual/student/stu-0125.htm>).

Need for the measure. According to the author, "While every person in the United States has the First Amendment right of free speech, the law does not require our colleges and universities to educate our students on their right to free speech". The author contends that higher education needs to have a holistic approach in how it educates students; that ensuring students' understanding of their right to free speech must be part of the holistic approach.

This measure requires the CCC and CSU, and requests the UC, to have a free speech statement and supplement the statement with consistent educational programming, which could be presented during new student orientation, or classroom instruction, or delivered in another setting whereby it effectively reaches students.

Committee comments. As currently drafted, the Legislative findings and declarations section of this measure has several long excerpts from speeches by various individuals regarding free speech. Some of the quotes may not necessarily need to be stated in this measure.

Moving forward, the author may wish to consider deleting some of the excerpts.

Additionally, Committee Staff understands that the intent of the author is to ensure collegiate students are educated about their right to free speech; however, as presently drafted, this measure would only apply to students attending public institutions of higher learning.

Moving forward, the author may wish to consider including the independent postsecondary institutions.

Related legislation. AB 2081 (Melendez), which will be heard by this Committee today, creates *The Campus Free Speech Act*, which, in part, would make a higher education institution that does not comply with the act ineligible for any state funding except pursuant to the Cal Grant Program or a successor state-funded student financial aid program.

SB 1381 (Nielsen), which is set to be heard by the Senate Education Committee on April 4, 2018, in part, requires a person who wishes to engage in expressive activity on the campus of a public postsecondary institution to be permitted to do so freely, as long as that person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

SB 1388 (Anderson), which is set to be heard by the Senate Education Committee on April 4, 2018, establishes the Forming Open and Robust University Minds Act, which, in part, requires

that the outdoor areas of a public institution of higher education be deemed traditional public forums, subject to certain exceptions, and requires that a person who wishes to engage in noncommercial expressive activity in the outdoor areas of a public institution of higher education be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institution of higher education.

Previous legislation. ACA 14 (Melendez) of 2017, which the author did not move through the Legislative Process, created the *Campus Free Speech Act*, which, in part, would make a higher education institution that does not comply with the act ineligible for any state funding except pursuant to the Cal Grant Program or a successor state-funded student financial aid program.

ACR 21 (Kiley), Resolution Chapter 103, Statutes of 2017, which urged all private and public universities in California to consider free speech statements that are consistent with specified principles to be a model for developing and adopting free speech statements.

SB 472 (Nielsen) of 2017, which was held on the Senate Appropriations Suspense File, was virtually identical to SB 1381 (as described in the "Related legislation" section of this analysis).

REGISTERED SUPPORT / OPPOSITION:

Support

AMCHA Initiative
Slavic-American Chamber of Commerce
University of California
Two individuals

Opposition

None on file.

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