

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1571 (Kiley) – As Amended March 19, 2019

[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.

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. Specifically, **this bill**:

- 1) Creates the Free Speech on Campus Act.
- 2) Requires a campus of the CCC or the CSU, and requests a campus of the UC, to make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression.
- 3) Requires that the free speech statement, per (2), include assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression.
- 4) 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.

EXISTING LAW:

Federal law.

Prohibits governments from adopting any law or policy abridging the freedom of speech, or of the press, or of the right of the people to peaceably assemble, and to petition the Government for redress of grievances (United States Constitution, Amendments I and XIV).

State law.

- 1) Provides all individuals may freely speak, write and publish their 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: *Federal changes.* The 45th President of the United States, signed an Executive Order (EO) on March 2019, *Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities*. This EO, in part, directs federal agencies to take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions of higher learning that receive federal research or education grants promote free inquiry through compliance with all applicable federal laws, regulations, and policies.

To note, the EO does not spell out how enforcement of the EO would work.

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.

Purpose of 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, “Every student should be made aware, in this context through a dispersed policy statement, of their right to free speech. Students should feel comfortable exercising their first amendment rights, even when their viewpoint may differ from their peers”.

This measure requires CCC and CSU campuses, and requests UC campuses, to create and disseminate a free speech statement affirming the importance of, and the campus’s commitment to promoting, freedom of expression.

Committee comments. As currently drafted, the Legislative findings and declarations section of this measure contain 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, this measure currently requires CCC and CSU campuses, and requests UC campuses, to make and disseminate a free speech statement; however, the measure is silent as to who the free speech statement will be disseminated.

Moving forward, the author may wish to provide specificity regarding when the free speech statements should be drafted and how the free speech statements should be disseminated on CCC, CSU, UC campuses.

Further, as presently drafted, this measure requires that the disseminated free speech statement include assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression. The phrase “exclusionary behavior” could be defined in a variety of ways.

Moving forward, the author may wish to consider defining the phrase “exclusionary behavior” in order to provide clarity as the CCC, CSU, and UC draft free speech statements to disseminate on their respective campuses.

Lastly, Committee Staff understands that the intent of the author is to ensure college 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.

Prior legislation. Over the course of the last few years, there have been many Legislative attempts seeking to address freedom of expression and speech on campuses of postsecondary institutions of higher learning, including:

- 1) AB 2374 (Kiley and Quirk) of 2018, which was held on the Assembly Appropriations Suspense File, in part, was similar in nature to this measure.
- 2) AB 2081 (Melendez) of 2018, which failed passage in this Committee on April 3, 2018, would have established the Campus Free Speech Act, which, in part, required colleges in

California to adopt policies on free expression that contain specified components, including freshman orientation programs describing the institutions' policies on free expression; and, the Act would have made colleges that did not comply with the bill's provision ineligible for Cal Grants.

- 3) HR 63 (Gallagher) of 2018, adopted by the Assembly on April 2, 2018, urges public colleges in California to condemn the use of violence or intimidation to prevent free expression of opposing viewpoints, and urges California's public colleges to secure the rights of individuals to free speech and to take actions to ensure that violence and intimidation are not used to suppress the free speech of others.
- 4) ACA 14 (Melendez) of 2017, which died in the Assembly Judiciary Committee, as a constitutional amendment, would have established the Campus Free Speech Act, which, in part, required the appropriate governing body of each higher education institution to develop and adopt a policy on free expression that contained specified components.
- 5) ACR 21 (Kiley), Resolution Chapter 103, Statutes of 2017, urges 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.
- 6) SB 1381 (Nielsen) of 2018, which was held on the Senate Appropriations Suspense File, in part, required a person wishing to engage in expressive activity on the campus of a public postsecondary institution be permitted to do so freely, as long as that person's conduct was not unlawful and did not materially and substantially disrupt the functioning of the institution.
- 7) SB 1388 (Anderson) of 2018, which failed passage in the Senate Education Committee on April 4, 2018, established the Forming Open and Robust University Minds Act, which, in part, required that the outdoor areas of a public institution of higher education be deemed traditional public forums, subject to certain exceptions, and required that a person wishing 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 was not unlawful and did not materially and substantially disrupt the functioning of the public institution of higher education.
- 8) SB 472 (Nielsen) of 2017, which was held on the Senate Appropriations Suspense File, was virtually identical to SB 1381.

REGISTERED SUPPORT / OPPOSITION:

Support

Fieldstead and Company, Inc.

Opposition

None on file.

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