



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4708/1
ARG:amn

2023 ASSEMBLY BILL 553

October 23, 2023 - Introduced by Representatives NEDWESKI, MURPHY, ALLEN, BEHNKE, BRANDTJEN, DITTRICH, EDMING, GOEBEN, GUNDRUM, MAXEY, MOSES, O'CONNOR, PENTERMAN, RETTINGER, SCHRAA and TUSLER, cosponsored by Senators CABRAL-GUEVARA and TOMCZYK. Referred to Committee on Colleges and Universities.

1 **AN ACT to amend** 36.11 (6) (c) and 38.04 (7m); and **to create** 36.41, 36.42, 38.34,
2 38.35 and 39.285 (1) (c) of the statutes; **relating to:** free speech and academic
3 freedom at University of Wisconsin System institutions and technical colleges,
4 due process in disciplinary proceedings at University of Wisconsin System
5 institutions and technical colleges, Wisconsin grant funding allocation, and
6 causes of action against the Board of Regents of the University of Wisconsin
7 System and technical college district boards.

Analysis by the Legislative Reference Bureau

This bill establishes certain standards related to free speech and academic freedom at University of Wisconsin System institutions and technical colleges. For violation of these standards, the Board of Regents of the UW System or technical college district board may be subject to a civil cause of action and must provide certain public notice of the violation.

The bill also establishes certain due process standards in disciplinary proceedings at UW System institutions and technical colleges. For violation of these standards, a UW institution or technical college may become ineligible for Wisconsin grant funding allocation.

ASSEMBLY BILL 553**FREE SPEECH AND ACADEMIC FREEDOM*****First Amendment protections***

Under the bill, a UW institution or technical college may not do any of the following: 1) restrict speech protected under the First Amendment, if the speaker's conduct is not unlawful and does not materially and substantially disrupt the functioning of the UW institution or technical college; 2) maintain and enforce time, place, and manner restrictions on expressive activities on the publicly accessible, open outdoor areas of its campus and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, unless those restrictions meet specified requirements; 3) designate any area of a campus a "free speech zone" or otherwise create policies restricting noncommercial expressive activities to a particular area of a campus; 4) subject to an exception, require a permit as a condition of being allowed to engage in expressive activities protected under the bill; 5) charge security fees, as part of a permit application, based on the content of expression or anticipated reaction; or 6) sanction individuals or groups for discriminatory harassment unless the speech targets its victim on the basis of a protected class under law, and is so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits. Under the bill, if a permit is required, the permitting process and any security fee must be content and viewpoint neutral.

The bill also specifies that all of an institution's or technical college's indoor areas that have been designated as public forums and publicly accessible outdoor areas, except classrooms while they are in use for instructional purposes, are governed by rules applicable to traditional public forums. The bill specifies that its provisions do not 1) enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity in a campus space reserved for that activity; or 2) limit the right of student expression at campus locations not specified in the bill.

The bill requires an institution or technical college to do all of the following: 1) conduct a survey biennially of students and employees on First Amendment rights, academic freedom, perceived political or other bias at the institution or technical college, and whether campus culture promotes self-censorship; 2) submit a report biennially to the legislature detailing the results of this survey; and 3) annually provide all students and employees with instruction in academic freedom, due process, and First Amendment protections.

Academic freedom

Under the bill, a UW or technical college policy or employee may not limit the expressive rights and academic freedom of an instructor to 1) conduct research, publish, lecture, or teach in the academic setting; 2) require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring, or arguing for or against, any argument or assertion; or 3) speak publicly as a private citizen on matters of public concern.

ASSEMBLY BILL 553***Principles***

The bill sets forth principles of academic freedom and freedom of expression to which the UW System and each institution must adhere, as well as UW System and institution responsibilities associated with these principles.

Notice and cause of action

The bill requires a UW institution or technical college that is found by a state or federal court, by a preponderance of the evidence, to have violated any of the free speech or academic freedom provisions described above to include, for four years, the following disclaimer on all notices to individuals regarding admission to the UW institution or technical college: “NOTICE: We are required by the State of Wisconsin to inform you that within the last four years ... [insert name of UW institution or technical college] has violated the free speech or academic freedom provisions in the Wisconsin statutes.”

Under the bill, the attorney general, a district attorney, or any person whose expressive rights were violated may bring a court action against the Board of Regents of the UW System or the technical college district board for violation by a UW institution or technical college of any of the free speech or academic freedom provisions described above and may seek an injunction and recovery of damages, court costs, and attorney fees for persons aggrieved by the violation. In such an action, if the court finds a violation, the court must award to the plaintiffs all of the following: 1) total damages for all prevailing persons aggrieved by the violation of not less than \$500 for the initial violation plus \$50 for each day after the complaint is served that the violation remains ongoing, but not exceeding an aggregate amount of \$100,000 for all cases stemming from a single controversy; and 2) court costs and reasonable attorney fees. An award to the plaintiffs of damages, court costs, or attorney fees must be paid from the UW institution’s or technical college’s administrative expense moneys.

DUE PROCESS IN DISCIPLINARY PROCEEDINGS***Due process guarantees***

Under the bill, a student enrolled in a UW institution or technical college has a property interest in maintaining the student’s status as a student that may be terminated against the student’s will only for due cause, including failure to meet academic standards or attendance requirements, failure to pay tuition or other fees, or violating conduct rules. A student accused of a disciplinary or conduct violation that carries a potential penalty of expulsion or suspension of more than nine days, and a UW institution’s or technical college’s employee accused of a disciplinary or conduct violation, have the right to be represented, at the person’s own expense, by a licensed attorney or non-attorney advocate who is permitted to fully participate during the disciplinary proceeding. The same right applies to a student organization, employee organization, or independent organization recognized by the UW institution or technical college (organization) accused of a violation and to a complaining student if the disciplinary proceeding arises from the student’s complaint. Prior to initiating a disciplinary proceeding or investigation, a UW institution or technical college must notify the student, employee, or organization

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that a complaint has been made and inform the student, employee, or organization of the student's, employee's, or organization's due process rights. A UW institution or technical college must ensure that all parties to a disciplinary proceeding, including if applicable an accusing student, have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. Before a disciplinary proceeding is scheduled, and at least two business days before a student, employee, or organization may be questioned about allegations of violations of the institution's or technical college's disciplinary or conduct rules, the institution or technical college must advise the student, employee, or organization in writing of these rights. A UW institution or technical college is not obligated to follow the state's rules of evidence in a disciplinary proceeding, but must make a good faith effort to include only relevant, probative evidence and must exclude evidence that is neither relevant nor probative. A UW institution or technical college must ensure that a disciplinary proceeding is carried out free from conflicts of interest by prohibiting overlap of administrative or adjudicative roles.

Penalties and Wisconsin grants

Under current law, the Wisconsin grant program, administered by the Higher Educational Aids Board, provides grants to resident students enrolled in eligible types of postsecondary schools, including UW institutions and technical colleges. The amount of funding available for these types of eligible postsecondary schools varies, and the UW System and technical colleges must annually submit to HEAB a proposed formula for awarding Wisconsin grants to students enrolled in UW institutions or technical colleges. HEAB must then approve, modify, or disapprove these proposed formulas for awarding grants to UW or technical college students in the next fiscal year.

Under this bill, a UW institution or technical college that violates any of the due process provisions described above more than once in a 10-year period is ineligible for allocation of Wisconsin grants for the longer of 1) a period of no less than one fiscal year; or 2) if the institution's or technical college's administrator causes the violation, until the administrator is permanently removed from his or her administrative role. HEAB's formula for awarding Wisconsin grants must take these loss of allocation penalties into consideration. The violation giving rise to this penalty may be found, by a preponderance of the evidence, by any of the following: 1) a state or federal court; 2) HEAB; or 3) a legislative standing committee having jurisdiction over matters relating to higher education.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.11 (6) (c) of the statutes is amended to read:

ASSEMBLY BILL 553**SECTION 1**

1 36.11 (6) (c) By February 10 of each year, the board shall develop and submit
2 to the higher educational aids board for its review under s. 39.285 (1) a proposed
3 formula for the awarding of grants under s. 39.435, except for grants awarded under
4 s. 39.435 (2) or (5), for the next fiscal year to students enrolled in the system. The
5 proposed formula shall take into consideration any institution's loss of funding
6 allocation under s. 36.42 (3) (a) and (b).

7 **SECTION 2.** 36.41 of the statutes is created to read:

8 **36.41 Campus free speech and academic freedom. (1) DEFINITION.** In this
9 section, "employee" means a member of the faculty, academic staff, or university staff
10 assigned to an institution. "Employee" also includes the institution's graduate
11 assistants and employees in training.

12 **(2) PRINCIPLES OF ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION.** (a) The
13 system and each institution shall adhere to the following principles of academic
14 freedom and freedom of expression in order to achieve the system's mission under s.
15 36.01 (2):

16 1. Academic freedom includes the freedom to explore all avenues of scholarship,
17 research, and creative expression, and to reach conclusions according to one's own
18 scholarly discernment. Freedom of expression includes the right to discuss and
19 present scholarly opinions and conclusions on all matters both in and outside the
20 classroom. These freedoms include the right to speak and write as a member of an
21 institution's community or as a private citizen without institutional discipline or
22 restraint on scholarly matters or on matters of public concern. The system and each
23 institution shall remain committed to these principles and provide all members of
24 an institution's community the broadest possible latitude to explore ideas and to
25 speak, write, listen, challenge, and learn.

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1 2. Although different ideas in an institution's community often and quite
2 naturally conflict, it is not the proper role of an institution to attempt to shield
3 individuals from ideas and opinions the institution or others find unwelcome,
4 disagreeable, or even deeply offensive. Despite the great value of civility, concerns
5 about civility and mutual respect may never be used as justification for closing off
6 discussion of ideas, however offensive or disagreeable those ideas may be to some
7 members within an institution's community.

8 3. The freedom to debate and discuss the merits of competing ideas does not
9 mean that members of an institution's community may say whatever they wish,
10 wherever they wish. Consistent with long-standing practice informed by law, the
11 system and each institution may restrict expression that violates the law, that falsely
12 defames a specific individual, that constitutes a genuine threat or discriminatory
13 harassment, that unjustifiably invades substantial privacy or confidentiality
14 interests, or that is otherwise directly incompatible with the functioning of an
15 institution. In addition, subject to sub. (3) (a) 2., the system and each institution may
16 reasonably regulate the time, place, and manner of expression to ensure that it does
17 not disrupt ordinary activities. However, these exceptions to the general principle
18 of freedom of expression shall be construed narrowly and may not be applied in a
19 manner that is inconsistent with the system's and each institution's commitment to
20 a completely free and open discussion of ideas.

21 (b) The principles stated in par. (a) carry responsibilities, as follows:

22 1. Academic freedom carries the responsibility for the faithful performance of
23 professional duties and obligations. All members of an institution's community share
24 in the responsibility for maintaining civility and a climate of mutual respect.
25 Although members of an institution's community are free to criticize and contest the

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1 views expressed on campus, they may not obstruct or otherwise interfere with the
2 freedom of others, including speakers who are invited to campus, to express views
3 they reject or even loathe.

4 2. Freedom of expression carries the obligation to make clear that when
5 speaking on matters of public interest or concern, one is speaking on behalf of oneself,
6 not the institution.

7 3. An institution has a solemn responsibility not only to promote lively and
8 fearless exploration, deliberation, and debate of ideas, but also to protect those
9 freedoms when others attempt to restrict them. Exploration, deliberation, and
10 debate may not be suppressed because the ideas put forth are thought by some or
11 even by most members of an institution's community, or those outside the
12 community, to be offensive, unwise, immoral, or wrongheaded. It is for the members
13 of an institution's community, not for the institution itself, to make those judgments
14 for themselves, and to act on those judgments not by seeking to suppress exploration
15 of ideas or expression of speech, but by openly and vigorously contesting the ideas
16 that they oppose. Fostering the ability of members of an institution's community to
17 engage in such debate and deliberation in an effective and responsible manner is an
18 essential part of an institution's educational mission.

19 **(3) FIRST AMENDMENT PROTECTIONS.** (a) Except as specified in this section, an
20 institution may not do any of the following:

21 1. Restrict speech protected under the First Amendment of the U.S.
22 Constitution, including noncommercial expressive activities protected under the
23 provisions of this section, which include all forms of peaceful assembly, protests,
24 speeches, distribution of literature, carrying signs, circulating petitions, and the
25 recording and lawful publication, including Internet publication, of video and audio

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1 lawfully recorded in public outdoor areas of public institutions of higher education,
2 if the speaker's conduct is not unlawful and does not materially and substantially
3 disrupt the functioning of the institution.

4 2. Maintain and enforce time, place, and manner restrictions on expressive
5 activities on the open outdoor areas of its campus that are generally accessible to the
6 public and indoor areas that have been designated as public forums, except
7 classrooms while they are in use for instructional purposes, unless those restrictions
8 meet all of the following requirements:

9 a. The restrictions are reasonable, in furtherance of a significant institutional
10 interest, and employ clear, published, content-neutral, and viewpoint-neutral
11 criteria.

12 b. The restrictions provide for ample alternative means for communication of
13 the information and allow for members of the institution's community to
14 spontaneously and contemporaneously distribute literature and assemble.

15 3. Designate any area of a campus a "free speech zone" or otherwise create
16 policies restricting noncommercial expressive activities to a particular area of a
17 campus.

18 4. Require a permit from any individual or group as a condition of being allowed
19 to engage in expressive activities protected under this section, unless the individual
20 or group is seeking exclusive control of a location for its expressive activity at a
21 reserved time. Any such permitting process may not be overly burdensome, and
22 applications for permits shall be evaluated solely using published content and
23 viewpoint-neutral criteria.

24 5. Charge security fees to a student or a student group, as part of an application
25 for those expressive activities that require a permit, based on the content of the

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1 expression, the content of the expression of an invited guest, or the anticipated
2 reaction to the student's, student group's, or invited guest's expression. Whether the
3 security fee is required and its amount may be determined only on the basis of
4 content and viewpoint-neutral criteria. Content and viewpoint-neutral criteria
5 include the time of the event, the location of the event, the anticipated size of the
6 invited audience, and whether alcohol will be served. Any institution charging
7 security fees pursuant to this subdivision shall publish the criteria it uses for
8 assessing those charges and shall have a published process for waving the fees for
9 those who cannot afford to pay them.

10 6. Sanction individuals or groups for discriminatory harassment unless the
11 speech targets its victim on the basis of the victim's membership in a class protected
12 under federal, state, or local law, and is so severe, pervasive, and objectively offensive
13 that it effectively bars a student from receiving equal access to educational
14 opportunities or benefits. This subdivision does not preclude an institution from
15 providing additional resources to a student affected by speech that cannot be
16 sanctioned under this subdivision or from taking nonpunitive actions.

17 (b) All indoor areas that have been designated as public forums and outdoor
18 public areas generally accessible to the public and operated by an institution or
19 under the institution's jurisdiction, except classrooms while they are in use for
20 instructional purposes, shall be governed by rules applicable to traditional public
21 forums.

22 (c) 1. Nothing in this section enables individuals to engage in conduct that
23 intentionally, materially, and substantially disrupts another's expressive activity if
24 that activity is occurring in a campus space reserved for that activity under the
25 exclusive use or control of a particular group.

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1 2. For purposes of subd. 1., and subject to subd. 3., “materially and
2 substantially disrupts” means when a person, with the intent or knowledge of doing
3 so, significantly hinders another person’s or group’s expressive activity, prevents the
4 communication of the message, or prevents the transaction of the business of a lawful
5 meeting, gathering, or procession by doing any of the following:

6 a. Engaging in fighting, violence, or seriously disruptive behavior.

7 b. Physically blocking or significantly hindering any person from attending,
8 listening to, viewing, or otherwise participating in an expressive activity.

9 3. For purposes of subd. 1., the phrase “materially and substantially disrupts”
10 does not include conduct that is protected under the First Amendment of the U.S.
11 Constitution or article I, section 3, of the Wisconsin Constitution. This protected
12 conduct includes lawful protests and counterprotests in the outdoor areas of campus
13 generally accessible to members of the public and indoor areas that have been
14 designated as public forums, except classrooms while they are in use for
15 instructional purposes, except during times when those areas have been reserved in
16 advance for other events, or minor, brief, or fleeting nonviolent disruptions of events
17 that are isolated and short in duration.

18 (d) Nothing in this section limits the right of student expression at campus
19 locations that are not specified in this section.

20 (e) An institution shall do all of the following:

21 1. Conduct a biennial survey of students and employees on First Amendment
22 rights, academic freedom, perceived political, ideological, or other bias at the
23 institution, and whether campus culture promotes self-censorship. The survey shall
24 be conducted using statistically sound methodology and in a manner that protects
25 the confidentiality of the survey’s respondents.

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1 2. Biennially submit to the legislature under s. 13.172 (2) a report detailing the
2 results of the survey under subd. 1.

3 3. Annually provide all students and employees with instruction in academic
4 freedom, due process, and First Amendment protections.

5 **(4) ACADEMIC FREEDOM.** (a) No board policy, institution policy, or employee may
6 limit the expressive rights and academic freedom of an instructor of an institution
7 to do any of the following:

8 1. Conduct research, publish, lecture, or teach in the academic setting.

9 2. Require students to participate in instructional exercises with legitimate
10 pedagogical purposes that involve exploring, or arguing for or against, any argument
11 or assertion.

12 3. Speak publicly as a private citizen on matters of public concern.

13 (b) Nothing in this subsection shall be interpreted to prohibit an institution
14 from requiring an instructor to perform the instructor's academic duties or from
15 setting performance standards consistent with this subsection or as required by
16 other law of this state.

17 **(5) NOTICE; INSTITUTIONAL AID.** (a) An institution that violates this section, for
18 4 years following the date of the finding of the violation under par. (b), shall include
19 a disclaimer on all notices, both printed or electronic, to individuals regarding
20 admission to the institution, in a type size no smaller than the majority of the rest
21 of the notice, in substantially the following form: "NOTICE: We are required by the
22 State of Wisconsin to inform you that within the last 4 years ... [insert name of
23 institution] has violated the free speech or academic freedom provisions in the
24 Wisconsin statutes."

ASSEMBLY BILL 553**SECTION 2**

1 (b) The penalty under par. (a) applies if a state or federal court in this state
2 finds, on the basis of a preponderance of the evidence, that the institution violated
3 this section.

4 **(6) CAUSE OF ACTION.** (a) Any person identified in par. (b) may bring an action
5 in circuit court against the board for violation of this section by an institution and
6 may seek any of the following:

- 7 1. An injunction against violation of this section.
- 8 2. Recovery from the board of damages, court costs, and attorney fees for
9 persons aggrieved by the violation.

10 (b) Any of the following persons may bring an action under par. (a):

- 11 1. The attorney general.
- 12 2. A district attorney.
- 13 3. Any person whose expressive rights were violated through the violation of
14 this section.

15 (c) Subject to par. (d), in an action brought under par. (a), if the court finds a
16 violation, the court shall award to the plaintiffs all of the following:

- 17 1. Total damages for all prevailing persons aggrieved by the violation of not less
18 than \$500 for the initial violation plus \$50 for each day the violation remains
19 ongoing, which shall accrue starting on the day after the complaint is served on the
20 board.

- 21 2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

22 (d) In an action brought under par. (a), the total damages, excluding court costs
23 and attorney fees, that may be awarded to plaintiffs in a case or cases stemming from
24 a single controversy may not exceed an aggregate amount of \$100,000. In violations

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1 harming multiple plaintiffs, the court shall divide the damages equitably among
2 them until the maximum award is exhausted, if applicable.

3 (e) If a court awards to plaintiffs damages, court costs, or attorney fees in an
4 action brought under this subsection, the board shall pay the total amount of the
5 award from moneys allocated under s. 36.09 (1) (h) to the violating institution for the
6 institution's administrative expenses.

7 **SECTION 3.** 36.42 of the statutes is created to read:

8 **36.42 Due process guarantees in disciplinary proceedings. (1)**

9 DEFINITIONS. In this section:

10 (a) "Disciplinary proceeding" means an investigatory interview or hearing, or
11 any other procedure adopted and used by an institution, relating to an alleged
12 violation that may result in disciplinary action against a student, employee, or
13 organization.

14 (b) "Employee" means a member of the faculty, academic staff, or university
15 staff assigned to an institution. "Employee" also includes the institution's graduate
16 assistants and employees in training.

17 (c) "Fully participate" includes having the opportunity to make opening and
18 closing statements, to examine and cross-examine witnesses, and to provide the
19 accuser or accused with support, guidance, and advice.

20 (d) "Organization" means a student organization, employee organization, or
21 independent organization that is officially recognized by an institution.

22 **(2) DUE PROCESS GUARANTEES.** (a) A student who has enrolled in an institution
23 has a property interest in maintaining the student's status as a student that may be
24 terminated against the student's will only for due cause, including failure to meet
25 academic standards, failure to pay academic fees, tuition, or other costs required for

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1 continued enrollment, failure to meet the institution's attendance requirements, or
2 a violation of the institution's conduct rules. A student who is accused of a violation
3 of disciplinary or conduct rules that carries a potential penalty of suspension of more
4 than 9 days or expulsion shall have the right to be represented, at the student's
5 expense, by a licensed attorney or, if the student prefers, a non-attorney advocate,
6 who shall be permitted to fully participate during the disciplinary proceeding.

7 (b) In addition to any substantive or procedural rights set forth in an employee's
8 employment contract, an employee who is accused of a violation of disciplinary or
9 conduct rules shall have the right to be represented, at the employee's expense, by
10 a licensed attorney or, if the employee prefers, a non-attorney advocate, who shall
11 be permitted to fully participate during the disciplinary proceeding.

12 (c) An organization that is accused of a violation of disciplinary or conduct rules
13 shall have the right to be represented, at the organization's expense, by a licensed
14 attorney or, if the organization prefers, a non-attorney advocate, who shall be
15 permitted to fully participate during the disciplinary proceeding.

16 (d) If a disciplinary proceeding arises from a complaint by a student against a
17 student, employee, or organization, the complaining student shall also have the right
18 to be represented, at that student's expense, by a licensed attorney or, if the
19 complaining student prefers, a non-attorney advocate.

20 (e) Prior to initiating a disciplinary proceeding or investigation, an institution
21 shall notify the student, employee, or organization that a complaint has been made
22 and inform the student, employee, or organization of his, her, or its due process
23 rights.

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1 (f) In a disciplinary proceeding, an institution is not obligated to follow the
2 state's rules of evidence but shall make a good faith effort to include only relevant,
3 probative evidence and shall exclude evidence that is neither relevant nor probative.

4 (g) Before a disciplinary proceeding is scheduled, and at least 2 business days
5 before a student, employee, or organization may be questioned by an institution or
6 agent of the institution about allegations of violations of the institution's disciplinary
7 or conduct rules, the institution shall advise the student, employee, or organization
8 in writing of the student's, employee's, or organization's rights under this subsection.

9 (h) The right of a student, employee, or organization to be represented by an
10 attorney or a non-attorney advocate applies until the conclusion of any appellate
11 process.

12 (i) An institution shall ensure that all parties to a disciplinary proceeding,
13 including the accused student, the accused employee, the accused organization, and,
14 if applicable, the accusing student, have access to all material evidence, including
15 both inculpatory and exculpatory evidence, not later than one week prior to the start
16 of any formal hearing or similar adjudicatory proceeding. This evidence may include
17 complainant statements, 3rd-party witness statements, electronically stored
18 information, written communications, social media posts, and demonstrative
19 evidence but may not include any materials that are privileged under applicable
20 federal or state law.

21 (j) An institution shall ensure that a disciplinary proceeding is carried out free
22 from conflicts of interest by prohibiting overlap of administrative or adjudicative
23 roles. An individual may not serve in more than one of the following roles:

- 24 1. Counselor or advocate of the accuser or victim.
- 25 2. Investigator.

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1 3. Hearing panel member.

2 4. Institutional prosecutor.

3 5. Adjudicator.

4 6. Appellate adjudicator.

5 (k) This subsection does not affect the obligation of an institution to provide
6 equivalent rights to a student who is the accuser or victim in the disciplinary
7 proceeding, including equivalent opportunities to have others present and fully
8 participate during the disciplinary proceeding, to not limit the choice of attorney or
9 non-attorney advocate in any meeting or in the disciplinary proceeding, and to
10 provide simultaneous notification of the institution's procedures for the accused and
11 the accuser or victim to appeal the result of the disciplinary proceeding.

12 (L) Nothing in this subsection shall prevent the temporary suspension of a
13 student, employee, or organization pending an investigation.

14 **(3) PENALTIES.** (a) An institution that violates this section more than once in
15 a 10-year period is ineligible for allocation of grants under s. 39.435, except grants
16 awarded under s. 39.435 (2) or (5), for a period of no less than one fiscal year.

17 (b) In addition to the period of ineligibility under par. (a), if an institution's
18 administrator causes the violation of this section, the institution is not eligible for
19 allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5),
20 until the administrator is permanently removed from his or her administrative role.

21 (c) The penalties under this subsection apply if any of the following find, on the
22 basis of a preponderance of the evidence, that the institution violated this section:

23 1. A state or federal court in this state.

24 2. The higher educational aids board.

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1 3. Any standing committee of the legislature having jurisdiction over matters
2 relating to higher education.

3 **SECTION 4.** 38.04 (7m) of the statutes is amended to read:

4 38.04 **(7m)** FINANCIAL AIDS. By February 10 of each year, the board shall develop
5 and submit to the higher educational aids board for its review under s. 39.285 (1) a
6 proposed formula for the awarding of grants under s. 39.435, except for grants
7 awarded under s. 39.435 (2) or (5), for the next fiscal year to students enrolled in the
8 technical colleges. The proposed formula shall take into consideration any technical
9 college's loss of funding allocation under s. 38.35 (3) (a) and (b).

10 **SECTION 5.** 38.34 of the statutes is created to read:

11 **38.34 Campus free speech and academic freedom. (1) DEFINITIONS.** In
12 this section:

13 (a) "Employee" means a staff member, faculty member, or administrator
14 employed by a district board.

15 (b) "Student" means an individual enrolled in a district school.

16 **(2) FIRST AMENDMENT PROTECTIONS.** (a) Except as specified in this section, a
17 district board may not do any of the following:

18 1. Restrict speech protected under the First Amendment of the U.S.
19 Constitution, including noncommercial expressive activities protected under the
20 provisions of this section, which include all forms of peaceful assembly, protests,
21 speeches, distribution of literature, carrying signs, circulation petitions, and the
22 recording and lawful publication, including Internet publication, of video and audio
23 lawfully recorded in public outdoor areas of public institutions of higher education,
24 if the speaker's conduct is not unlawful and does not materially and substantially
25 disrupt the functioning of the district school.

ASSEMBLY BILL 553**SECTION 5**

1 2. Maintain and enforce time, place, and manner restrictions on expressive
2 activities on the open outdoor areas of district campuses that are generally accessible
3 to the public and indoor areas that have been designated as public forums, except
4 classrooms while they are in use for instructional purposes, unless those restrictions
5 meet all of the following requirements:

6 a. The restrictions are reasonable, in furtherance of a significant interest of the
7 district board, and employ clear, published, content-neutral, and viewpoint-neutral
8 criteria.

9 b. The restrictions provide for ample alternative means for communication of
10 the information and allow for members of the district campus's community to
11 spontaneously and contemporaneously distribute literature and assemble.

12 3. Designate any area of a district campus a "free speech zone" or otherwise
13 create policies restricting noncommercial expressive activities to a particular area
14 of a district campus.

15 4. Require a permit from any individual or group as a condition of being allowed
16 to engage in expressive activities protected under this section, unless the individual
17 or group is seeking exclusive control of a location for its expressive activity at a
18 reserved time. Any such permitting process may not be overly burdensome, and
19 applications for permits shall be evaluated solely using published content and
20 viewpoint-neutral criteria.

21 5. Charge security fees to a student or a student group, as part of an application
22 for those expressive activities that require a permit, based on the content of the
23 expression, the content of the expression of an invited guest, or the anticipated
24 reaction to the student's, student group's, or invited guest's expression. Whether the
25 security fee is required and its amount may be determined only on the basis of

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1 content and viewpoint-neutral criteria. Content and viewpoint-neutral criteria
2 include the time of the event, the location of the event, the anticipated size of the
3 invited audience, and whether alcohol will be served. Any district board charging
4 security fees pursuant to this subdivision shall publish the criteria it uses for
5 assessing those charges and shall have a published process for waving the fees for
6 those who cannot afford to pay them.

7 6. Sanction individuals or groups for discriminatory harassment unless the
8 speech targets its victim on the basis of the victim's membership in a class protected
9 under federal, state, or local law, and is so severe, pervasive, and objectively offensive
10 that it effectively bars a student from receiving equal access to educational
11 opportunities or benefits. This subdivision does not preclude a district board from
12 providing additional resources to a student affected by speech that cannot be
13 sanctioned under this subdivision or from taking nonpunitive actions.

14 (b) All indoor areas that have been designated as public forums and outdoor
15 public areas generally accessible to the public and owned or operated by a district
16 board, except classrooms while they are in use for instructional purposes, shall be
17 governed by rules applicable to traditional public forums.

18 (c) 1. Nothing in this section enables individuals to engage in conduct that
19 intentionally, materially, and substantially disrupts another's expressive activity if
20 that activity is occurring in a campus space reserved for that activity under the
21 exclusive use or control of a particular group.

22 2. For purposes of subd. 1., and subject to subd. 3., "materially and
23 substantially disrupts" means when a person, with the intent or knowledge of doing
24 so, significantly hinders another person's or group's expressive activity, prevents the

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1 communication of the message, or prevents the transaction of the business of a lawful
2 meeting, gathering, or procession by doing any of the following:

3 a. Engaging in fighting, violence, or seriously disruptive behavior.

4 b. Physically blocking or significantly hindering any person from attending,
5 listening to, viewing, or otherwise participating in an expressive activity.

6 3. For purposes of subd. 1., the phrase “materially and substantially disrupts”
7 does not include conduct that is protected under the First Amendment of the U.S.
8 Constitution or article I, section 3, of the Wisconsin Constitution. This protected
9 conduct includes lawful protests and counterprotests in the outdoor areas of campus
10 generally accessible to members of the public and indoor areas that have been
11 designated as public forums, except classrooms while they are in use for
12 instructional purposes, except during times when those areas have been reserved in
13 advance for other events, or minor, brief, or fleeting nonviolent disruptions of events
14 that are isolated and short in duration.

15 (d) Nothing in this section limits the right of student expression at campus
16 locations that are not specified in this section.

17 (e) A district board shall do all of the following:

18 1. Conduct a biennial survey of students and employees on First Amendment
19 rights, academic freedom, perceived political, ideological, or other bias at the district
20 schools, and whether campus culture promotes self-censorship. The survey shall be
21 conducted using statistically sound methodology and in a manner that protects the
22 confidentiality of the survey’s respondents.

23 2. Biennially submit to the legislature under s. 13.172 (2) a report detailing the
24 results of the survey under subd. 1.

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1 3. Annually provide all students and employees with instruction in academic
2 freedom, due process, and First Amendment protections.

3 **(3) ACADEMIC FREEDOM.** (a) No district board policy or employee may limit the
4 expressive rights and academic freedom of an instructor of a district school to do any
5 of the following:

6 1. Conduct research, publish, lecture, or teach in the academic setting.

7 2. Require students to participate in instructional exercises with legitimate
8 pedagogical purposes that involve exploring, or arguing for or against, any argument
9 or assertion.

10 3. Speak publicly as a private citizen on matters of public concern.

11 (b) Nothing in this subsection shall be interpreted to prohibit a district board
12 from requiring an instructor to perform the instructor's academic duties or from
13 setting performance standards consistent with this subsection or as required by
14 other law of this state.

15 **(4) NOTICE; INSTITUTIONAL AID.** (a) A district board that violates this section, for
16 4 years following the date of the finding of the violation under par. (b), shall include
17 a disclaimer on all notices, both printed or electronic, to individuals regarding
18 admission to a technical college of the district, in a type size no smaller than the
19 majority of the rest of the notice, in substantially the following form: "NOTICE: We
20 are required by the State of Wisconsin to inform you that within the last 4 years ...
21 [insert name of technical college] has violated the free speech or academic freedom
22 provisions in the Wisconsin statutes."

23 (b) The penalty under par. (a) applies if a state or federal court in this state
24 finds, on the basis of a preponderance of the evidence, that the district board violated
25 this section.

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1 **(5) CAUSE OF ACTION.** (a) Any person identified in par. (b) may bring an action
2 in circuit court against a district board for violation of this section and may seek any
3 of the following:

4 1. An injunction against violation of this section.

5 2. Recovery from the district board of damages, courts costs, and attorney fees
6 for persons aggrieved by the violation.

7 (b) Any of the following persons may bring an action under par. (a):

8 1. The attorney general.

9 2. A district attorney.

10 3. Any person whose expressive rights were violated through the violation of
11 this section.

12 (c) Subject to par. (d), in an action brought under par. (a), if the court finds a
13 violation, the court shall award to the plaintiffs all of the following:

14 1. Total damages for all prevailing persons aggrieved by the violation of not less
15 than \$500 for the initial violation plus \$50 for each day the violation remains
16 ongoing, which shall accrue starting on the day after the complaint is served on the
17 district board.

18 2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

19 (d) In an action brought under par. (a), the total damages, excluding court costs
20 and attorney fees, that may be awarded to plaintiffs in a case or cases stemming from
21 a single controversy may not exceed an aggregate amount of \$100,000. In violations
22 harming multiple plaintiffs, the court shall divide the damages equitably among
23 them until the maximum award is exhausted, if applicable.

24 (e) If a court awards to plaintiffs damages, court costs, or attorney fees in an
25 action brought under this subsection, the district board shall pay the total amount

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1 of the award from moneys that the district board has allocated for its administrative
2 expenses.

3 (f) Section 893.80 does not apply to an action brought against a district board
4 under this section.

5 **SECTION 6.** 38.35 of the statutes is created to read:

6 **38.35 Due process guarantees in disciplinary proceedings. (1)**

7 DEFINITIONS. In this section:

8 (a) “Disciplinary proceeding” means an investigatory interview or hearing, or
9 any other procedure adopted and used by a district board, relating to an alleged
10 violation that may result in disciplinary action against a student, employee, or
11 organization.

12 (b) “Employee” means a staff member, faculty member, or administrator
13 employed by a district board.

14 (c) “Fully participate” includes having the opportunity to make opening and
15 closing statements, to examine and cross-examine witnesses, and to provide the
16 accuser or accused with support, guidance, and advice.

17 (d) “Organization” means a student organization, employee organization, or
18 independent organization that is officially recognized by a district board.

19 **(2) DUE PROCESS GUARANTEES.** (a) A student who has enrolled in a district school
20 has a property interest in maintaining the student’s status as a student that may be
21 terminated against the student’s will only for due cause, including failure to meet
22 academic standards, failure to pay fees or other costs required for continued
23 enrollment, failure to meet the district board’s attendance requirements, or a
24 violation of the district board’s conduct rules. A student who is accused of a violation
25 of disciplinary or conduct rules that carries a potential penalty of suspension of more

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1 than 9 days or expulsion shall have the right to be represented, at the student's
2 expense, by a licensed attorney or, if the student prefers, a non-attorney advocate,
3 who shall be permitted to fully participate during the disciplinary proceeding.

4 (b) In addition to any substantive or procedural rights set forth in an employee's
5 employment contract, an employee who is accused of a violation of disciplinary or
6 conduct rules shall have the right to be represented, at the employee's expense, by
7 a licensed attorney or, if the employee prefers, a non-attorney advocate, who shall
8 be permitted to fully participate during the disciplinary proceeding.

9 (c) An organization that is accused of a violation of disciplinary or conduct rules
10 shall have the right to be represented, at the organization's expense, by a licensed
11 attorney or, if the organization prefers, a non-attorney advocate, who shall be
12 permitted to fully participate during the disciplinary proceeding.

13 (d) If a disciplinary proceeding arises from a complaint by a student against a
14 student, employee, or organization, the complaining student shall also have the right
15 to be represented, at that student's expense, by a licensed attorney or, if the
16 complaining student prefers, a non-attorney advocate.

17 (e) Prior to initiating a disciplinary proceeding or investigation, a district board
18 shall notify the student, employee, or organization that a complaint has been made
19 and inform the student, employee, or organization of his, her, or its due process
20 rights.

21 (f) In a disciplinary proceeding, a district board is not obligated to follow the
22 state's rules of evidence but shall make a good faith effort to include only relevant,
23 probative evidence and shall exclude evidence that is neither relevant nor probative.

24 (g) Before a disciplinary proceeding is scheduled, and at least 2 business days
25 before a student, employee, or organization may be questioned by a district board or

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1 agent of the district board about allegations of violations of the district board's
2 disciplinary or conduct rules, the district board shall advise the student, employee,
3 or organization in writing of the student's, employee's, or organization's rights under
4 this subsection.

5 (h) The right of a student, employee, or organization to be represented by an
6 attorney or a non-attorney advocate applies until the conclusion of any appellate
7 process.

8 (i) A district board shall ensure that all parties to a disciplinary proceeding,
9 including the accused student, the accused employee, the accused organization, and,
10 if applicable, the accusing student, have access to all material evidence, including
11 both inculpatory and exculpatory evidence, not later than one week prior to the start
12 of any formal hearing or similar adjudicatory proceeding. This evidence may include
13 complainant statements, 3rd-party witness statements, electronically stored
14 information, written communications, social media posts, and demonstrative
15 evidence but may not include any materials that are privileged under applicable
16 federal or state law.

17 (j) A district board shall ensure that a disciplinary proceeding is carried out free
18 from conflicts of interest by prohibiting overlap of administrative or adjudicative
19 roles. An individual may not serve in more than one of the following roles:

- 20 1. Counselor or advocate of the accuser or victim.
- 21 2. Investigator.
- 22 3. Hearing panel member.
- 23 4. District board prosecutor.
- 24 5. Adjudicator.
- 25 6. Appellate adjudicator.

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1 (k) This subsection does not affect the obligation of a district board to provide
2 equivalent rights to a student who is the accuser or victim in the disciplinary
3 proceeding, including equivalent opportunities to have others present and fully
4 participate during the disciplinary proceeding, to not limit the choice of attorney or
5 non-attorney advocate in any meeting or in the disciplinary proceeding, and to
6 provide simultaneous notification of the district board's procedures for the accused
7 and the accuser or victim to appeal the result of the disciplinary proceeding.

8 (L) Nothing in this subsection shall prevent the temporary suspension of a
9 student, employee, or organization pending an investigation.

10 **(3) PENALTIES.** (a) A district board that violates this section more than once in
11 a 10-year period is ineligible for allocation of grants under s. 39.435, except grants
12 awarded under s. 39.435 (2) or (5), for a period of no less than one fiscal year.

13 (b) In addition to the period of ineligibility under par. (a), if a district board
14 administrator causes the violation of this section, the district board is not eligible for
15 allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5),
16 until the administrator is permanently removed from his or her administrative role.

17 (c) The penalties under this subsection apply if any of the following find, on the
18 basis of a preponderance of the evidence, that the district board violated this section:

19 1. A state or federal court in this state.

20 2. The higher educational aids board.

21 3. Any standing committee of the legislature having jurisdiction over matters
22 relating to higher education.

23 **SECTION 7.** 39.285 (1) (c) of the statutes is created to read:

24 39.285 (1) (c) The board shall ensure that any formula approved under par. (a)
25 takes into consideration any University of Wisconsin institution's loss of funding

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1 allocation under s. 36.42 (3) (a) and (b) or technical college district board's loss of
2 funding allocation under s. 38.35 (3) (a) and (b).

3 (END)