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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**Contact:** Dan Schmidt, Deputy Director

**2019 Senate Bill 403**

**Senate Substitute  
Amendment 1**

### **2019 SENATE BILL 403**

2019 Senate Bill 403 requires the Board of Regents (BOR) to adopt a policy on free expression for University of Wisconsin (UW) System campuses that includes specific statements; addresses the reporting and investigation of policy violations; and outlines specific disciplinary procedures relating to policy violations. The bill also prescribes requirements for student and employee training on the policy, judicial redress of alleged policy violations, and annual reporting to the Legislature and to the Governor regarding free expression on UW System campuses.

#### **Policy Statements**

The bill requires that the free expression policy adopted by the BOR contain seven specific statements, including: (1) that it is not the proper role of an institution to shield individuals from speech that is protected by the First Amendment of the U.S. Constitution; and (2) that any person lawfully present on campus may protest or demonstrate, but that protests and demonstrations that interfere with the expressive rights of others are subject to sanction.

#### **Discipline**

The policy must include a range of disciplinary sanctions for anyone under the jurisdiction of an institution who engages in violent or other disorderly conduct that materially and substantially disrupts the free expression of others. The policy must provide that in all disciplinary cases involving expressive conduct, students are entitled to a disciplinary hearing under published procedures that include specific rights, such as the right to receive notice of the charges, to the active assistance of counsel, to present a defense, to call witnesses, and to appeal.

The policy must require a formal investigation and disciplinary hearing the second time a student is alleged to have interfered with the expressive rights of others. The policy must also require suspension for a minimum of one semester of any student who has twice been found responsible for interfering with the expressive rights of others and expulsion of a student who has been found to have interfered with the expressive rights of others three times.

#### **Reporting**

The policy must include procedures that allow a person to make a report that another person has violated the free expression policy. The bill also requires that the BOR submit an annual report to the Governor and to the Legislature that describes a number of specified outcomes related to the policy. The BOR must make the report available to the public on the UW System internet site, and each standing committee of the Legislature that receives the report must hold a public hearing before taking any action regarding the report.

## Notice and Training

Under the bill, the BOR must notify and inform all students of the policy at the time of adoption, as well as provide training for incoming freshmen, transfer students, and new employees. The bill also requires that instructors receive annual training on the policy.

## Restriction of Student Expression

The bill provides that none of the requirements regarding the policy are to be construed to prevent institutions from regulating student speech or activity that is prohibited by law. Under the bill, institutions may restrict student expression only for expressive activity that is not protected by the First Amendment, including: violations of state or federal law; peer-on-peer harassment; *quid pro quo* sexual harassment; and true threats. The bill also authorizes the BOR to promulgate rules to further the purposes of the free expression policy.

## Enforcement

The bill allows a person whose expressive rights are violated as provided under the bill to bring an action to enjoin a violation and to obtain reasonable attorney fees and damages. The bill also allows a defendant who prevails in such an action to recover reasonable attorney fees if the action was frivolous or brought in bad faith.

## SENATE SUBSTITUTE AMENDMENT 1

The substitute amendment provides that the same free expression policies and provisions that apply to the BOR and to UW System campuses also apply to the Wisconsin Technical College System (WTCS) Board and the Wisconsin technical colleges. Therefore, under the substitute amendment, the WTCS Board is required to: (1) adopt a free expression policy that conforms to the requirements discussed above; (2) annually report to the Legislature and to the Governor the same information that the BOR must also report; and (3) provide notice and orientation to students and training to employees and instructors relating to the free expression policies and rules.

Like the BOR, the substitute amendment authorizes the WTCS Board to promulgate rules to further the purposes of the free expression policy, and, as is true for UW System institutions, technical colleges are not prohibited from regulating unlawful student speech or activities. Likewise, a person whose expressive rights are violated at a technical college may seek redress through the courts.

The substitute amendment also does the following:

- Defines what it means to materially and substantially disrupt.
- Modifies the definition of a true threat to mean a statement that a listener **may reasonably interpret as a serious expression of an intent to commit an unlawful act of violence to a particular individual or group of individuals**, rather than as a **serious expression of a purpose to inflict harm**.
- Makes some modifications to the required free expression policy statements, including that it retains the bill provision prohibiting an institution from taking action, as an institution, on the public policy controversies of the day in such a way as to require students or faculty to publicly express a given view of social policy, but, unlike the bill, does not require that the institutions, themselves, remain neutral.

## **BILL HISTORY**

Senator Kapenga introduced 2019 Senate Bill 403 on September 16, 2019, and offered Senate Substitute Amendment 1 on November 19, 2019. On February 21, 2020, the Senate Committee on Universities, Technical Colleges, Children and Families recommended adoption of the amendment on a vote of Ayes, 4; Noes, 3; and recommended passage of the bill, as amended, on a vote of Ayes, 4; Noes, 3.

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