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SUMMARY

Regulation of expression on college campuses

- Generally prohibits a state institution of higher education from limiting or restricting free expression by members of its campus community in public areas of campus.
- Requires each state institution to report and publish the courses of action implemented in accordance with the act's provisions, and to update that report whenever a cause of action is brought against it for a violation of the right of free expression.
- Requires each state institution of higher education to adopt a policy on harassment consistent with the act's provisions.
- Requires each state institution of higher education to make public the policies, regulations, and expectations of students regarding free expression.

Regulation of use of campus facilities

- Declares that outdoor areas of campuses of state institutions of higher education are public forums for members of campus communities and prohibits institutions from creating "free speech zones" or other outdoor areas where expression is restricted.
- Prohibits a state institution of higher education from charging security fees to a student or student group based on the content of expression or the anticipated reaction to that content.

In-state residency status for tuition

- Expands residency status for in-state college tuition rates to qualifying individuals who received a certificate of high school equivalence while residing in Ohio but subsequently relocated out of state.

Title

- Entitles the act the “Forming Open and Robust University Minds Act” (or “FORUM Act”).

DETAILED ANALYSIS

REGULATION OF EXPRESSION ON COLLEGE CAMPUSES

In accordance with the 1st and 14th Amendments of the U.S. Constitution, private citizens in public places are entitled to speak freely, express opposing viewpoints, and peacefully assemble. This protection extends to professors and students of state-funded colleges and universities (generally referred to as “state institutions of higher education” in Ohio law).¹ Likewise, the Ohio Constitution and laws generally prohibit state institutions of higher education from restricting freedom of speech or the right to peacefully assemble. However, the right to free expression on a public campus is not absolute and depends on “where, when, and how” the expression is made. For example, a content-based restriction might be permitted when it is narrowly tailored to serve a compelling government interest, whereas most other restrictions must be reasonable and content-neutral.

The act prescribes the manner in which state institutions of higher education must comply with these constitutional principles and addresses “where, when, and how” they may restrict expression.

Restrictions or limitations on expression prohibited

The act generally prohibits a state institution of higher education, or any of its administrators acting in their official capacity, from taking any action or enforcing any policy that limits or restricts the constitutional right of a member of the campus community to engage in noncommercial expressive activity. The act further states that its prohibition applies only so long as that activity is lawful and does not disrupt the functioning of the state institution.²

For purposes of its prohibition, the act specifies that:

- “Campus community” includes students, student groups, faculty, staff, and employees of a state institution and their invited guests; and
- “Expressive activity” includes any lawful verbal, written, audiovisual, or electronic communication of ideas, including all forms of peaceful assembly, protests, or speeches, distribution of literature, carrying and displaying signs, and circulating petitions.

¹ See for example, *Sweezy v. New Hampshire*, 345 U.S. 250 (1957) and *Healy v. James* 408 U.S. 180 (1972). State institutions of higher education are defined in R.C. 3345.011, not in the act.

² R.C. 3345.0212(A).

Exclusions, exceptions, and permissible restrictions

Generally

Under the act, an institution may lawfully prohibit, limit, or restrict expressive activities that are not protected under the U.S. Constitution. It also states that an individual may not engage in conduct that intentionally and substantially disrupts another individual's expressive activity occurring in a campus space reserved for exclusive use of a particular group.

Time, place, and manner restrictions

A state institution of higher education also may maintain and enforce reasonable time, place, and manner restrictions, provided that each restriction:

1. Is developed in service of a "significant" institutional interest;
2. Employs clear, published, viewpoint- and content-neutral criteria;
3. Provides for ample means of expression by members of the campus community; and
4. Allows members of the campus community to assemble spontaneously and contemporaneously and to distribute literature.³

Policy making and reporting requirements

Policy on harassment

The act requires each state institution of higher education to adopt a policy on harassment that is consistent and strictly adheres to the act's definition, which specifies that harassment is unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the individual's education program or activity.⁴

Distribution of policy on free expression

Each state institution of higher education must make public the policies, regulations, and expectations of students regarding free expression in its handbook, on its website, and in its student orientation programs. Each institution also must develop and distribute materials, programs, and procedures on free expression for its administrators, campus police, residence life officials, and professors, and any other employees or agents responsible for student discipline or education.⁵

Report on policy

By September 20, 2021, to the extent it complies with federal privacy laws, each state institution of higher education must submit to the Governor, the Speaker of the House, and the President of the Senate a report detailing the courses of action implemented in accordance with the act's free speech provisions. The report must contain the following information:

³ R.C. 3345.0213(A)(3).

⁴ R.C. 3345.0211(A) and 3345.0212(C).

⁵ R.C. 3345.0212(C).

1. A description of any barriers to or incidents of disruption of free expression, including, but not limited to, attempts to block or prohibit speakers and any investigation of students or student groups on the basis of expression; and
2. Any other information the institution finds necessary and appropriate for the public to evaluate whether free expression rights have been adequately protected.

The act requires each institution to publish the report on its main webpage. The report must be (1) accessible within three links, (2) word-searchable, and (3) publicly accessible without user registration.

If an action is brought against an institution for an alleged violation of expression rights, the institution must submit an additional supplementary report containing the information outlined above and a copy of the complaint, within 30 days after commencement of that action.⁶

Other provisions

The act's free speech provisions expressly "supersede" any rule, policy, action, communication, or requirement of any institution of higher education. Accordingly, it specifies no rule, policy, action, communication, or requirement may contradict or diminish the effect of those provisions and requirements.⁷

REGULATION OF USE OF CAMPUS FACILITIES

Prohibiting use of facilities by certain persons

The act declares that outdoor areas of state university and college campuses are public forums for all members of the campus community. It prohibits state institutions from creating "free speech zones" or designating other outdoor areas where expressive activities are restricted.⁸ For purposes of this prohibition, "outdoor areas" are the generally accessible outside areas of a campus where members of the campus community are commonly allowed, such as grassy areas, walkways, and common areas. It does not include restricted areas where a majority of the campus community generally is not allowed.⁹

The act also eliminates a provision of law that permitted a state institution of higher education to prohibit the use of facilities for meeting or speaking purposes by:

1. Members of the Communist Party;
2. Advocates for the overthrow of government by force or violence; or

⁶ R.C. 3345.0214.

⁷ R.C. 3345.0211(B).

⁸ R.C. 3345.0213(A)(1) and (2).

⁹ R.C. 3345.0211(A)(6).

3. Persons whose presence frustrate high ethical and moral standards or the primary educational purposes and orderly conduct of the institution.¹⁰

Collection of security fees

The act prohibits a state institution of higher education from charging security fees to a student or student group based on the content of expression, the content of expression of an invited guest, or the anticipated reaction to an invited guest's expression.¹¹

IN-STATE RESIDENCY STATUS FOR TUITION

The act requires the Chancellor of Higher Education to grant residency status for in-state tuition to students who, while residing in Ohio officially withdrew from school, passed a high school equivalency test, and received a certificate of high school equivalence, but subsequently moved out of state and then relocated back to Ohio. Additionally, the student must not have received a high school diploma in Ohio or another state or country.¹²

This extension of residency status expands a provision of continuing law commonly known as the Forever Buckeye Program.¹³ The program exempts eligible students from the usual 12-month waiting period necessary to establish Ohio residency.¹⁴ Under the act, students who received a certificate of high school equivalency in Ohio may qualify for the program, in addition to graduates from Ohio high schools or those who completed the final year of homeschooling in Ohio.¹⁵

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Education	01-28-20
Passed Senate (33-0)	01-28-20
Reported, H. Higher Education	11-24-20
Passed House (66-27)	12-02-20
Senate concurred in House amendments (24-9)	12-03-20

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¹⁰ R.C. 3345.021.

¹¹ R.C. 3345.0212(B).

¹² R.C. 3333.31(E)(1)(b).

¹³ <https://www.ohiohighered.org/forever-buckeyes>.

¹⁴ Ohio Administrative Code 3333-1-10.

¹⁵ R.C. 3333.31(E)(1)(a).