

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

348B0336

## HOUSE EDUCATION ENGROSSED NO. **HB 1087** - 2/7/2019

Introduced by: Representatives Peterson (Sue), Haugaard, and Qualm and Senators Stalzer, Greenfield (Brock), Langer, and Maher

1 FOR AN ACT ENTITLED, An Act to promote intellectual diversity at certain institutions of  
2 higher education.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-53 be amended by adding a NEW SECTION to read:

5 As used in sections 2 to 10, inclusive, of this Act, the term:

6 (1) "Benefit," means:

7 (a) Recognition;

8 (b) Registration;

9 (c) The use of facilities at a public institution of higher education for assemblies,  
10 gatherings, meetings, or speaking purposes;

11 (d) The use of channels of communication; and

12 (e) Funding sources that are available to student associations at a public  
13 institution of higher education;

14 (2) "Free expression," includes the right to discuss and present scholarly opinions and



1 conclusions on all matters, within the boundaries of a public institution of higher  
2 education, whether outdoors or indoors, without fear of institutional discipline or  
3 restraint, and the right to speak and write on matters of public concern, as a member  
4 of the institution's administration, faculty, other staff, and student body, or as a  
5 private citizen;

6 (3) "Institution of higher education," means a public degree-granting institution under  
7 the control of the Board of Regents;

8 (4) "Intellectual diversity," means a learning environment that exposes students to and  
9 encourages exploration regarding a variety of ideological and political perspectives.

10 Section 2. That chapter 13-53 be amended by adding a NEW SECTION to read:

11 Except as otherwise provided, expressive activity is protected under this section and sections  
12 3 to 10 of this Act, inclusive. Expressive activity includes any lawful verbal or written means  
13 by which one person communicates ideas to another, and includes peaceful assembly, protests,  
14 speeches, including by guest speakers, the distribution of literature, the carrying of signs, and  
15 the circulation of petitions.

16 Section 3. That chapter 13-53 be amended by adding a NEW SECTION to read:

17 Any outdoor area within the boundaries of a public institution of higher education  
18 constitutes a public forum for the benefit of students, faculty, administrators, other employees,  
19 and their invited guests, unless access to the area is commonly restricted.

20 A public institution of higher education may maintain and enforce reasonable restrictions  
21 regarding use of an outdoor area, including the time, place, and manner in which expressive  
22 activities may occur, provided the restrictions are clear, narrowly tailored in the service of a  
23 significant institutional interest, published, include content and viewpoint-neutral criteria, and  
24 provide an alternative means of expression.

1 A restriction under this section may not prohibit or limit students, faculty, administrators,  
2 other employees, or their invited guests, from spontaneously and contemporaneously  
3 assembling, distributing literature, or engaging in both activities.

4 Nothing in this section limits the right of a student to engage in an expressive activity  
5 elsewhere within the boundaries of the institution.

6 Section 4. That chapter 13-53 be amended by adding a NEW SECTION to read:

7 A person may engage in noncommercial expressive activity, as described in section 2 of this  
8 Act, within the boundaries of a public institution of higher education, whether outdoors or  
9 indoors, provided the person's conduct is not unlawful and that the person's conduct does not  
10 materially or substantially disrupt the functioning of the institution.

11 An institution may maintain and enforce reasonable restrictions on the time, place, and  
12 manner in which expressive activities may occur, in accordance with this section, provided the  
13 restrictions are clear, narrowly tailored in the service of a significant institutional interest,  
14 published, include content and viewpoint-neutral criteria, and provide an alternative means of  
15 expression.

16 A restriction under this section may not prohibit or limit students, faculty, administrators,  
17 other employees, and their invited guests from spontaneously and contemporaneously  
18 assembling, distributing literature, or engaging in both activities.

19 Nothing in this section prevents an institution from prohibiting, limiting, or restricting  
20 expression that is not protected under the First Amendment to the United States Constitution,  
21 including a true threat or any expression intended to provoke and likely to produce imminent  
22 lawless action.

23 Nothing in this section prevents a public institution of higher education from prohibiting  
24 expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive

1 that a student is effectively denied equal access to educational opportunities or benefits provided  
2 by the institution.

3 Nothing in this section authorizes a group or an individual to knowingly or intentionally  
4 engage in conduct that materially and substantially hinders or disrupts another's expressive  
5 activity, or that prevents the communication of a message or the transaction of a lawful meeting,  
6 gathering, or procession by:

- 7 (1) Fighting, engaging in violence, or engaging in other unlawful behavior; or
- 8 (2) Physically blocking or using threats of violence to prevent a person from attending,  
9 listening to, viewing, or otherwise participating in an expressive activity.

10 Section 5. That chapter 13-53 be amended by adding a NEW SECTION to read:

11 A public institution of higher education may not:

- 12 (1) Deny an ideological, political, or religious student organization any benefit or  
13 privilege available to any other student organization;
- 14 (2) Discriminate against an ideological, political, or religious student organization based  
15 on the expression of the organization; or
- 16 (3) Prohibit an ideological, political, or religious student organization from requiring that  
17 its leaders, the members of the organization, or both:
  - 18 (a) Affirm and adhere to the organization's sincerely held beliefs;
  - 19 (b) Comply with the organization's standards of conduct; or
  - 20 (c) Further the organization's mission or purpose, as defined by the organization.

21 Section 6. That chapter 13-53 be amended by adding a NEW SECTION to read:

22 Each public institution of higher education shall include in the institution's handbooks,  
23 publish on the institution's website, on separate pages with dedicated tabs, and include in any  
24 student orientation programs all policies, rules, and expectations of students with respect to free

1 expression and expressive activity within the boundaries of the institution.

2 Section 7. That chapter 13-53 be amended by adding a NEW SECTION to read:

3 Each public institution of higher education shall, through the development of materials,  
4 programs, procedures, and protocols, ensure that administrators, faculty, and other employees,  
5 including campus security personnel and residence life officials, are apprised of and understand  
6 the institution's policies, rules, and expectations, with respect to free expression and expressive  
7 activity within the boundaries of the institution.

8 Section 8. That chapter 13-53 be amended by adding a NEW SECTION to read:

9 On or before January first of each year, each public institution of higher education shall  
10 prepare a report that sets forth all actions taken by the institution to promote and ensure  
11 intellectual diversity and the free exchange of ideas, and to otherwise comply with this Act. The  
12 institution shall also:

13 (1) Describe in the report any barriers to free expression within the boundaries of the  
14 institution or any incidents in which free expression was disrupted, and include:

15 (a) Any attempts to block or prohibit a speaker;

16 (b) Any investigation into students or student organizations based on their speech;

17 and

18 (c) Any disciplinary action that resulted from an incident, provided that any  
19 description of an incident involving a student may not include or reveal the  
20 student's personally identifiable information;

21 (2) Post the report on the institution's website, in a manner that is readily accessible and  
22 clearly defined using a separately identified tab on the website's navigation bar;

23 (3) Make the report searchable by the use of keywords and phrases;

24 (4) Make the report accessible without requiring registration, a user name, a password,

1 or any other identifier;

2 (5) Provide a copy of each report to the Governor, the Board of Regents, and to each  
3 member of the Legislature; and

4 (6) If subjected to legal action resulting from an alleged violation of the First  
5 Amendment, provide a revised report together with a copy of any complaint or  
6 amended complaint to the Governor and the members of the Legislature within thirty  
7 days.

8 Section 9. That chapter 13-53 be amended by adding a NEW SECTION to read:

9 The Board of Regents shall by policy require each institution under its control to maintain  
10 a commitment to the principles of free expression and encourage the timely and rational  
11 discussion of topics that promote the ethical and intellectual development and intellectual  
12 diversity of students enrolled in the institutions.

13 The policy required by this section shall:

14 (1) Recognize the right of administrators, faculty, other staff, and students to discuss any  
15 problem or issue that presents itself, even if there are varying perspectives regarding  
16 the problem or issue and even if the problem or issue conflicts with the institution's  
17 values and principles;

18 (2) Recognize that an individual should not be institutionally shielded from a viewpoint  
19 that the individual finds to be unwelcome, disagreeable, or offensive, provided the  
20 viewpoint is shared in a manner that evidences civility and mutual respect;

21 (3) Recognize that the right to engage in free expression is constitutionally protected;

22 (4) Recognize that encouraging intellectual diversity and fostering the ability of the  
23 administrators, faculty, other staff, and students to engage in debate and deliberation  
24 in an effective and responsible manner is an essential part of each institution's

1 educational mission;

2 (5) Recognize that while administrators, faculty, other employees, and students are free  
3 to criticize and contest views expressed within the boundaries of an institution, and  
4 to criticize and contest speakers who are invited to the institution, administrators,  
5 faculty, other employees, and students may not obstruct or otherwise interfere with  
6 the conduct of the institution or the freedom of others to express views;

7 (6) Permit the maintenance and enforcement of reasonable restrictions on the time, place,  
8 and manner in which expressive activities may occur, as provided for in sections 3  
9 and 4 of this Act; and

10 (7) Permit the restriction of expression that:

11 (a) Violates the law;

12 (b) Falsely defames an individual;

13 (c) Constitutes a genuine threat;

14 (d) Constitutes harassment;

15 (e) Unjustifiably invades privacy or confidentiality interests; or

16 (f) Is otherwise directly incompatible with the functioning of the institution.

17 Section 10. That chapter 13-53 be amended by adding a NEW SECTION to read:

18 The Board of Regents shall implement a policy that offers equal opportunities in  
19 employment, as required by law, to all persons qualified by academic preparation, experience,  
20 and ability, without discrimination based on intellectual diversity.

21 Section 11. That chapter 13-53 be amended by adding a NEW SECTION to read:

22 Beginning July 1, 2019, any student enrolling as a freshman in a baccalaureate degree  
23 program at a public institution of higher education under the control of the Board of Regents  
24 shall, as a condition of graduation, demonstrate the successful completion of three credits in the

1 area of United States history and three credits in the area of United States government. For  
2 purposes of this section, successful completion may also be demonstrated through the use of  
3 advanced placement tests, dual credits, or a college level examination program.

4 Section 12. That chapter 13-53 be amended by adding a NEW SECTION to read:

5 For purposes of this section, the term, civics test, means the one hundred questions that, as  
6 of January 1, 2019, officers of the United States citizenship and immigration services use as the  
7 basis for selecting the questions posed to applicants for naturalization, in order that the  
8 applicants can demonstrate a knowledge and understanding of the fundamentals of United States  
9 history and the principles and form of United States government, as required by 8 U.S.C.  
10 § 1423.

11 Beginning July 1, 2019, any student enrolling as a freshman in a baccalaureate degree  
12 program at a public institution of higher education under the control of the Board of Regents  
13 shall, as a condition of graduation, correctly answer at least eighty-five percent of the questions  
14 on the civics test.

15 The Board of Regents shall provide for the administration of the civics test at each  
16 applicable institution and shall, upon request, provide to the person administering the civics test  
17 the correct answer or acceptable answers to each question.

18 A student may take the test, in whole or in part, at any time after enrolling at an institution  
19 of higher education and may repeat the test, as often as necessary, to achieve the required  
20 percentage of correct answers.

21 Neither the Board of Regents nor any public institution of higher education may impose or  
22 collect any fees or charges in connection with this section.