

CHAPTER 261H

SPEECH AND EXPRESSION — PUBLIC INSTITUTIONS OF HIGHER EDUCATION

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261H.1 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. “*Benefit*” with respect to a student organization at a public institution of higher education means any of the following:

- a. Recognition.
- b. Registration.
- c. Use of facilities for meetings or speaking purposes.
- d. Use of channels of communication.
- e. Access to funding sources that are otherwise available to other student groups.

2. “*Campus community*” means students, administrators, faculty, and staff at a public institution of higher education and guests invited to a public institution of higher education by the institution’s students, administrators, faculty, or staff.

3. “*Materially and substantially disrupts*” means when a person, with the intent to or with knowledge of doing so, engages in violent or other disorderly conduct that significantly hinders a previously scheduled or reserved activity occurring on university grounds, buildings, and facilities. “*Materially and substantially disrupts*” does not include conduct that is protected under the first amendment to the Constitution of the United States, including but not limited to lawful protests and counterprotests.

4. “*Outdoor areas of campus*” means the generally accessible outside areas of campus where students, administrators, faculty, and staff at a public institution of higher education are commonly allowed, such as grassy areas, walkways, or other similar common areas and does not include areas outside health care facilities including both stand-alone facilities and mixed-use facilities that are embedded within another facility, veterinary medicine facilities, a facility or outdoor area used by the institution’s athletics program or teams, or other outdoor areas where access is restricted to a majority of the campus community. In recognition of the healing environment that is essential to its clinical purposes, the areas outside health care facilities, including both stand-alone facilities and mixed-use facilities that are embedded within another facility, are not designated public forums.

5. “*Public institution of higher education*” means a community college established under [chapter 260C](#) or an institution of higher learning governed by the state board of regents.

6. “*Student*” means an individual who is enrolled on a full-time or part-time basis at a public institution of higher education.

7. “*Student organization*” means a group officially recognized at or officially registered by a public institution of higher education, or a group seeking such official recognition or official registration, comprised of students who are admitted and in attendance at the public institution of higher education, and who receive, or are seeking to receive, student organization benefits or privileges through the public institution of higher education.

[2019 Acts, ch 11, §1, 7](#)

261H.2 Public institutions of higher education — duties.

1. The state board of regents and the board of directors of each community college shall adopt a policy that includes all of the following statements:

- a. That the primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research,

teaching, discussion, and debate. This statement shall provide that, to fulfill this function, the institution must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the first amendment to the Constitution of the United States.

b. (1) That it is not the proper role of an institution of higher education to shield individuals from speech protected by the first amendment to the Constitution of the United States, which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.

(2) That it is the proper role of an institution of higher education to encourage diversity of thoughts, ideas, and opinions and to encourage, within the bounds of the first amendment to the Constitution of the United States, the peaceful, respectful, and safe exercise of first amendment rights.

c. That students and faculty have the freedom to discuss any problem that presents itself, assemble, and engage in spontaneous expressive activity on campus, within the bounds of established principles of the first amendment to the Constitution of the United States, and subject to reasonable time, place, and manner restrictions that are consistent with established first amendment principles.

d. That the outdoor areas of campus of an institution of higher education are public forums, open on the same terms to any invited speaker subject to reasonable time, place, and manner restrictions that are consistent with established principles of the first amendment to the Constitution of the United States.

2. The state board of regents shall develop materials, programs, and procedures to ensure that those persons who are responsible for discipline, instruction, or administration of the campus community, or who have oversight of student government organizations, or distribute activity fee funds, including but not limited to presidents, vice-presidents, deans, department directors, administrators, campus police officers, residence life officials, faculty, and members of student government organizations, understand the policies, regulations, and duties of the institution regarding free expression on campus consistent with [this chapter](#).

3. a. Each public institution of higher education shall protect the first amendment rights of the institution's students, staff, and faculty and shall establish and publicize policies that prohibit institutional restrictions and penalties based on protected speech, including political speech, to the fullest extent required by the first amendment to the Constitution of the United States. A public institution of higher education shall not retaliate against a member of the campus community who files a complaint for a violation of [this subsection](#) pursuant to [section 261H.5](#).

b. If it is determined, after exhaustion of all available administrative and judicial appeals, that a faculty member knowingly and intentionally restricts the protected speech or otherwise penalizes a student in violation of [this subsection](#), the faculty member shall be subject to discipline by the institution through the normal disciplinary processes of the institution, and such discipline may include termination depending on the totality of the facts. If the faculty member is licensed by the board of educational examiners under [chapter 272](#), the board of educational examiners shall conduct a hearing pursuant to [section 272.13](#), and the faculty member may be subject to disciplinary action by the board.

[2019 Acts, ch 11, §2, 7](#); [2021 Acts, ch 130, §1](#)

Referred to in [§272.2](#)

Section amended

261H.3 Protected activities.

1. Noncommercial expressive activities protected under the provisions of [this chapter](#) include but are not limited to any lawful oral or written means by which members of the campus community may communicate ideas to one another, including but not limited to all forms of peaceful assembly, protests, speeches including by invited speakers, distribution of literature, circulating petitions, and publishing, including publishing or streaming on an internet site, or audio or video recorded in outdoor areas of campus.

2. A member of the campus community who wishes to engage in noncommercial expressive activity in outdoor areas of campus shall be permitted to do so freely, subject to reasonable time, place, and manner restrictions, and as long as the member's conduct

is not unlawful, does not impede others' access to a facility or use of walkways, and does not disrupt the functioning of the public institution of higher education, subject to the protections of [subsection 1](#). The public institution of higher education may designate other areas of campus available for use by the campus community according to institutional policy, but in all cases access to designated areas of campus must be granted on a viewpoint-neutral basis within the bounds of established principles of the first amendment to the Constitution of the United States.

3. A public institution of higher education shall not deny benefits or privileges available to student organizations based on the viewpoint of a student organization or the expression of the viewpoint of a student organization by the student organization or its members protected by the first amendment to the Constitution of the United States. In addition, a public institution of higher education shall not deny any benefit or privilege to a student organization based on the student organization's requirement that the leaders of the student organization agree to and support the student organization's beliefs, as those beliefs are interpreted and applied by the organization, and to further the student organization's mission.

4. [This section](#) shall not be interpreted as limiting the right of student expression in a counter demonstration held in an outdoor area of campus as long as the conduct at the counter demonstration is not unlawful, does not materially and substantially prohibit the free expression rights of others in an outdoor area of campus or disrupt the functioning of the public institution of higher education, and does not impede others' access to a facility or use of walkways, subject to reasonable time, place, and manner restrictions that are consistent with established principles of the first amendment to the Constitution of the United States.

5. [This chapter](#) shall not be interpreted as preventing public institutions of higher education from prohibiting, limiting, or restricting expression that the first amendment to the Constitution of the United States does not protect, including but not limited to a threat of serious harm and expression directed or likely directed to provoke imminent unlawful actions; or from prohibiting harassment, including but not limited to expression which is so severe, pervasive, and subjectively and objectively offensive that the expression unreasonably interferes with an individual's access to educational opportunities or benefits provided by a public institution of higher education.

[2019 Acts, ch 11, §3, 7; 2019 Acts, ch 89, §12, 22, 25](#)

261H.4 Public forums on campus — freedom of association.

1. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums. Public institutions of higher education may maintain and enforce clear, published, reasonable viewpoint-neutral time, place, and manner restrictions that are narrowly tailored in furtherance of a significant institutional interest, but shall allow members of the campus community to engage in spontaneous expressive activity and to distribute literature. Restrictions instituted by a public institution of higher education under [this section](#) shall provide for ample alternative means of expression.

2. Except as provided in [this chapter](#), and subject to reasonable time, place, and manner restrictions, a public institution of higher education shall not designate any area of campus a free-speech zone or otherwise create policies restricting expressive activities to a particular outdoor area of campus.

3. Nothing in [this chapter](#) shall be construed to grant individuals the right to engage in conduct that intentionally, materially, and substantially disrupts the expressive activity of a person or student organization if the public institution of higher education has reserved space in an outdoor area of campus for activity by the person or student organization in accordance with [this chapter](#).

[2019 Acts, ch 11, §4, 7](#)

261H.5 Remedies — statute of limitations — immunity.

1. A member of the campus community aggrieved by a violation of [this chapter](#) may file a complaint with the governing body of the public institution of higher education.

2. A member of the campus community aggrieved by a violation of [this chapter](#) may

assert such violation as a defense or counterclaim in a disciplinary action or in a civil or administrative proceeding brought against the member of the campus community.

3. A member of the campus community shall bring a claim for violation of [this chapter](#) pursuant to [this section](#) not later than one year after the day the cause of action accrues.

4. [This section](#) shall not be interpreted to limit any other remedies available to a member of the campus community.

5. Nothing in [this section](#) shall be construed to make any administrator, officer, employee, or agent of a public institution of higher education personally liable for acts taken pursuant to the individual's official duties.

[2019 Acts, ch 11, §5, 7](#)

Referred to in [§261H.2](#)

261H.6 Training — first amendment to the Constitution of the United States.

Each public institution of higher education shall provide training on free speech under the first amendment to the Constitution of the United States to all students, faculty, and staff on an annual basis, which elected officials and staff shall be permitted to attend.

[2021 Acts, ch 130, §2](#)

NEW section

261H.7 Student government organizations — student fees — appeals — liability.

1. Each institution of higher education governed by the state board of regents shall make a student government organization's access to and authority over any moneys disbursed to the student government organization by the institution contingent upon the student government organization's compliance with the first amendment to the Constitution of the United States and the provisions of [this chapter](#).

2. If, after exhaustion of all administrative appeals, it is determined that a student government organization knowingly and intentionally violated the first amendment rights of a member of the campus community or that an action or decision of a student government organization is in violation of [this section](#), the institution shall suspend the student government organization's authority to manage and disburse student fees for a period of one year. During this period of suspension, such student fees shall be managed and disbursed by the institution.

[2021 Acts, ch 130, §3](#)

NEW section

261H.8 Training by institution prohibited — specific defined concepts.

1. For purposes of [this section](#), unless the context otherwise requires:

a. "*Race or sex scapegoating*" means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex, or claiming that, consciously or unconsciously, and by virtue of persons' race or sex, members of any race are inherently racist or are inherently inclined to oppress others, or that members of a sex are inherently sexist or inclined to oppress others.

b. "*Race or sex stereotyping*" means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of the individual's race or sex.

c. "*Specific defined concepts*" includes all of the following:

(1) That one race or sex is inherently superior to another race or sex.

(2) That the United States of America and the state of Iowa are fundamentally or systemically racist or sexist.

(3) That an individual, solely because of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.

(4) That an individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex.

(5) That members of one race or sex cannot and should not attempt to treat others without respect to race or sex.

(6) That an individual's moral character is necessarily determined by the individual's race or sex.

(7) That an individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.

(8) That any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of that individual's race or sex.

(9) That meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

(10) Any other form of race or sex scapegoating or any other form of race or sex stereotyping.

2. Each public institution of higher education may continue training that fosters a workplace and learning environment that is respectful of all employees and students. However, the president, vice presidents, deans, department directors, or any other administrator of a public institution of higher education shall ensure that any mandatory staff or student training provided by an employee of the institution or by a contractor hired by the institution does not teach, advocate, act upon, or promote specific defined concepts. [This subsection](#) shall not be construed as preventing an employee or contractor who provides mandatory training from responding to questions regarding specific defined concepts raised by participants in the training.

3. Institution diversity and inclusion efforts shall discourage students of a public institution of higher education from discriminating against another by political ideology or any characteristic protected under the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, and applicable state law. Each public institution of higher education shall prohibit its employees from discriminating against students and employees by political ideology or any characteristic protected under the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, and applicable state law.

4. [This section](#) shall not be construed to do any of the following:

a. Inhibit or violate the first amendment rights of students or faculty, or undermine a public institution of higher education's duty to protect to the fullest degree intellectual freedom and free expression. The intellectual vitality of students and faculty shall not be infringed under [this section](#).

b. Prevent a public institution of higher education from promoting racial, cultural, ethnic, intellectual, or academic diversity or inclusiveness, provided such efforts are consistent with the provisions of [this section](#), [chapter 216](#), and other applicable law.

c. Prohibit discussing specific defined concepts as part of a larger course of academic instruction.

d. Create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the state of Iowa, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

e. Prohibit a state or federal court or agency of competent jurisdiction from ordering a training or remedial action containing discussions of specific defined concepts as a remedial action due to a finding of discrimination, including discrimination based on race or sex.

f. Prohibit the use of curriculum that teaches the topics of sexism, slavery, racial oppression, racial segregation, or racial discrimination, including topics relating to the enactment and enforcement of laws resulting in sexism, racial oppression, segregation, and discrimination.

[2021 Acts, ch 163, §2](#)

Referred to in [§25A.1, 279.74](#)

NEW section