

Senate Study Bill 1205 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON EDUCATION BILL BY
CHAIRPERSON SINCLAIR)

A BILL FOR

1 An Act providing for training, prohibitions, and requirements
2 relating to first amendment rights at school districts and
3 public postsecondary educational institutions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 261H.2, Code 2021, is amended to read as
2 follows:

3 **261H.2 ~~Policy adoption~~ Public institutions of higher**
4 **education — duties.**

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

8 ~~1.~~ a. That the primary function of an institution of higher
9 education is the discovery, improvement, transmission, and
10 dissemination of knowledge by means of research, teaching,
11 discussion, and debate. This statement shall provide that, to
12 fulfill this function, the institution must strive to ensure
13 the fullest degree of intellectual freedom and free expression
14 allowed under the first amendment to the Constitution of the
15 United States.

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

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

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

34 ~~4.~~ d. That the outdoor areas of campus of an institution
35 of higher education are public forums, open on the same terms

1 to any invited speaker subject to reasonable time, place,
2 and manner restrictions that are consistent with established
3 principles of the first amendment to the Constitution of the
4 United States.

5 2. Each public institution of higher education shall
6 develop materials, programs, and procedures to ensure
7 that those persons who are responsible for discipline,
8 instruction, or administration of the campus community, or
9 who have oversight of student government organizations, or
10 distribute activity fee funds, including but not limited
11 to administrators, campus police officers, residence life
12 officials, faculty, and members of student government
13 organizations, understand the policies, regulations, and
14 duties of the institution regarding free expression on campus
15 consistent with this chapter.

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

26 b. If it is determined, after exhaustion of all available
27 administrative and judicial appeals, that a faculty member
28 knowingly and intentionally restricts the protected speech or
29 otherwise penalizes a student in violation of this subsection,
30 the faculty member shall be subject to discipline by the
31 institution through the normal disciplinary processes of the
32 institution, and such discipline may include termination
33 depending on the totality of the facts. If the faculty member
34 is licensed by the board of educational examiners under chapter
35 272, the board of educational examiners shall conduct a hearing

1 pursuant to section 272.13, and the faculty member may be
2 subject to disciplinary action by the board.

3 Sec. 2. NEW SECTION. **261H.6 Training — first amendment to**
4 **the Constitution of the United States.**

5 Each public institution of higher education shall provide
6 to each member of the institution's student government
7 organization instruction and training on the first amendment to
8 the Constitution of the United States, including descriptions
9 of what is or is not protected under the amendment.

10 Sec. 3. NEW SECTION. **261H.7 Race and sex stereotyping —**
11 **training by institution prohibited.**

12 1. For purposes of this section, unless the context
13 otherwise requires:

14 *a. "Divisive concepts" includes all of the following:*

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

17 (2) That the state of Iowa is fundamentally racist or
18 sexist.

19 (3) That an individual, by virtue of the individual's race
20 or sex, is inherently racist, sexist, or oppressive, whether
21 consciously or unconsciously.

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

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

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

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

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

35 (9) That meritocracy or traits such as a hard work ethic

1 are racist or sexist, or were created by a particular race to
2 oppress another race.

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

5 *b. "Race or sex stereotyping"* includes any of the following:

6 (1) Ascribing character traits, values, moral and ethical
7 codes, privileges, status, or beliefs to a race or sex, or to
8 an individual because of the individual's race or sex.

9 (2) Assigning fault, blame, or bias to a race or sex, or
10 to members of a race or sex because of their race or sex, or
11 claiming that, consciously or unconsciously, and by virtue of
12 persons' race or sex, members of any race are inherently racist
13 or are inherently inclined to oppress others, or that members
14 of a sex are inherently sexist or inclined to oppress others.

15 2. Each public institution of higher education may continue
16 training that fosters a workplace and learning environment that
17 is respectful of all employees and students. However, the
18 president of a public institution of higher education shall
19 ensure that any mandatory staff or student training provided
20 by an employee of the institution or by a contractor hired by
21 the institution does not teach, advocate, act upon, or promote
22 divisive concepts. This subsection shall not be construed as
23 preventing an employee or contractor who provides mandatory
24 training from responding to questions regarding divisive
25 concepts raised by participants in the training.

26 3. Institution diversity and inclusion efforts shall
27 discourage employees and students of the institution from
28 discriminating against another by color, race, ethnicity,
29 sex, or any other characteristic protected under the federal
30 Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, and
31 applicable state law.

32 4. This section shall not be construed to do any of the
33 following:

34 *a.* Inhibit or violate the first amendment rights of students
35 or faculty, or undermine a public institution of higher

1 education's duty to protect to the fullest degree intellectual
2 freedom and free expression. The intellectual vitality of
3 students and faculty shall not be infringed under this section.

4 *b.* Prevent a public institution of higher education
5 from promoting racial, cultural, or ethnic diversity or
6 inclusiveness, provided such efforts are consistent with the
7 provisions of this section.

8 *c.* Prohibit discussing divisive concepts as part of a larger
9 course of academic instruction.

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

14 Sec. 4. NEW SECTION. **261H.8 Student government**
15 **organizations — student fees — appeals — liability.**

16 1. Each institution of higher education governed by
17 the state board of regents shall make a student government
18 organization's access to and authority over any moneys
19 disbursed to the student government organization by
20 the institution contingent upon the student government
21 organization's compliance with the first amendment to the
22 Constitution of the United States and the provisions of this
23 chapter.

24 2. If, after exhaustion of all administrative or
25 judicial appeals, it is determined that a student government
26 organization knowingly and intentionally violated the first
27 amendment rights of a member of the campus community or that
28 an action or decision of a student government organization is
29 in violation of this section, the institution shall suspend
30 the student government organization's authority to manage and
31 disburse student fees for a period of two years. During this
32 period of suspension, such student fees shall be managed and
33 disbursed by the institution.

34 Sec. 5. Section 262.9, Code 2021, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 39. Appoint annually from among its
2 membership a three-member nonpartisan free speech committee
3 that shall receive complaints under section 261H.5 relating
4 to the institutions of higher learning governed by the state
5 board.

6 Sec. 6. Section 272.2, subsection 14, Code 2021, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. e. The board may deny a license to or
9 revoke the license of a person upon the board's finding by a
10 preponderance of evidence that the person discriminated against
11 a student in violation of section 261H.2, subsection 3, or
12 section 279.73.

13 Sec. 7. NEW SECTION. 279.73 Intellectual freedom —
14 protection — complaints.

15 1. The board of directors of each school district shall
16 protect the intellectual freedom of the school district's
17 students and practitioners and shall establish and publicize
18 policies that protect students and faculty from discrimination
19 based on political bias. A person shall not retaliate against
20 a person who files a complaint for a violation of this section.
21 If the person who files a complaint for a violation of this
22 section is an employee of the school district, the provisions
23 of section 70A.29 shall apply.

24 2. If the board of directors of the school district or
25 a court finds that an employee of the school district who
26 holds a license, certificate, statement of recognition, or
27 authorization issued by the board of educational examiners
28 under chapter 272 discriminated against a student in violation
29 of this section, the board of educational examiners shall
30 conduct a hearing pursuant to section 272.13, and the
31 employee may be subject to disciplinary action by the board of
32 educational examiners pursuant to section 272.2, subsection 14.

33 Sec. 8. NEW SECTION. 279.74 Race and sex stereotyping —
34 training prohibited.

35 1. For purposes of this section, unless the context

1 otherwise requires:

2 *a.* "Divisive concepts" means the same as defined in section
3 261H.7.

4 *b.* "Race or sex stereotyping" means the same as defined in
5 section 261H.7.

6 2. Each school district may continue training that fosters
7 a workplace and learning environment that is respectful of
8 all employees and students. However, the superintendent of
9 each school district shall ensure that any mandatory staff or
10 student training provided by an employee of the school district
11 or by a contractor hired by the school district does not
12 teach, advocate, act upon, or promote divisive concepts. This
13 subsection shall not be construed as preventing an employee or
14 contractor who provides mandatory training from responding to
15 questions regarding divisive concepts raised by participants in
16 the training.

17 3. School district diversity and inclusion efforts shall
18 discourage employees and students of the school district from
19 discriminating against another by color, race, ethnicity,
20 sex, or any other characteristic protected under the federal
21 Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, and
22 applicable state law.

23 4. This section shall not be construed to do any of the
24 following:

25 *a.* Inhibit or violate the first amendment rights of students
26 or faculty, or undermine a school district's duty to protect to
27 the fullest degree intellectual freedom and free expression.
28 The intellectual vitality of students and faculty shall not be
29 infringed under this section.

30 *b.* Prevent a school district from promoting racial,
31 cultural, or ethnic diversity or inclusiveness, provided such
32 efforts are consistent with the provisions of this section.

33 *c.* Prohibit discussing divisive concepts as part of a larger
34 course of academic instruction.

35 *d.* Create any right or benefit, substantive or procedural,

1 enforceable at law or in equity by any party against the state
2 of Iowa, its departments, agencies, or entities, its officers,
3 employees, or agents, or any other person.

4 Sec. 9. IMPLEMENTATION OF ACT. Section 25B.2, subsection
5 3, shall not apply to this Act.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill provides for first amendment rights training,
10 prohibitions, and requirements at or by school districts and
11 public postsecondary educational institutions.

12 Each public institution of higher education must develop
13 materials, programs, and procedures to ensure that those
14 persons who are responsible for discipline, instruction, or
15 administration of the campus community, and who have oversight
16 of student government organizations, or distribute activity fee
17 funds, understand the policies, regulations, and duties of the
18 institution regarding free expression on campus.

19 Each such public institution of higher education must
20 protect the first amendment rights of its students, staff, and
21 faculty and must establish and publicize policies that prohibit
22 institutional restrictions and penalties based on protected
23 speech. An institution shall not retaliate against a person
24 filing a discrimination complaint.

25 If it is determined that a faculty member knowingly and
26 intentionally restricts the protected speech or otherwise
27 penalizes a student, the faculty member shall be subject to
28 discipline by the institution. The bill establishes similar
29 requirements for school districts. If the faculty member or in
30 the case of a school district, the school employee, is licensed
31 by the board of educational examiners, the faculty member or
32 school employee, as appropriate, may be subject to disciplinary
33 action by the board.

34 If it is determined that a student government organization
35 knowingly and intentionally violated the first amendment

1 rights of a member of the campus community or is in violation
2 of the provisions of the bill, the institution shall suspend
3 the student government organization's authority to manage and
4 disburse student fees for a period of two years, during which
5 time the student fees shall be managed and disbursed by the
6 institution.

7 Each public institution of higher education must provide
8 to each student and each student government organization
9 instruction and training on the first amendment to the
10 Constitution of the United States, including descriptions of
11 what is or is not protected under the amendment.

12 Each school district and each public institution of higher
13 learning may continue all training that fosters a workplace
14 that is respectful of all employees and students, but the
15 superintendent of the school district or the president of the
16 institution must ensure that any mandatory staff or student
17 training provided by an employee of the school district or the
18 institution or by a contractor hired by the school district
19 or the institution does not teach, advocate, act upon, or
20 promote divisive concepts, which the bill defines to include
21 that one race or sex is inherently superior to another; that
22 Iowa is fundamentally racist or sexist; that an individual,
23 by virtue of the individual's race or sex, is inherently
24 racist, sexist, or oppressive; that an individual should be
25 discriminated against or receive adverse treatment solely or
26 partly because of his or her race or sex; that members of one
27 race or sex cannot and should not attempt to treat others
28 without respect to race or sex; that an individual's moral
29 character is necessarily determined by his or her race or sex;
30 that an individual bears responsibility for actions committed
31 in the past by other members of the same race or sex; that any
32 individual should feel psychological distress on account of
33 that individual's race or sex; that meritocracy or traits such
34 as a hard work ethic are racist or sexist, or were created by
35 a particular race to oppress another race; and any other form

1 of race or sex stereotyping or any other form of race or sex
2 scapegoating.

3 The bill defines "race or sex stereotyping" as ascribing
4 character traits, values, moral and ethical codes, privileges,
5 status, or beliefs to a race or sex, or to an individual
6 because of the individual's race or sex; assigning fault,
7 blame, or bias to a race or sex; or to members of a race or sex
8 because of their race or sex; or claiming that, consciously or
9 unconsciously, and by virtue of persons' race or sex, members
10 of any race are inherently racist or are inherently inclined to
11 oppress others, or that members of a sex are inherently sexist
12 or inclined to oppress others.

13 Institution diversity and inclusion efforts must discourage
14 employees and students of the school district or institution
15 from discriminating against another by color, race, ethnicity,
16 sex, or any other characteristic protected under the federal
17 Civil Rights Act of 1964 or applicable state law.

18 Nothing in the provision shall be construed to inhibit
19 or violate the first amendment rights of students or faculty
20 or undermine the institution's or school district's duty to
21 protect intellectual freedom and free expression; prevent
22 a school district or public postsecondary institution
23 from promoting racial, cultural, or ethnic diversity or
24 inclusiveness; to prohibit discussing divisive concepts as part
25 of a larger course of academic instruction; or to create any
26 right or benefit, substantive or procedural, enforceable at
27 law or in equity by any party against the state of Iowa, its
28 departments, agencies, or entities, its officers, employees,
29 or agents, or any other person.

30 Each regents university shall make student government
31 organization access to and authority over any moneys disbursed
32 to the student government organization by the university
33 contingent upon the student government organization's
34 compliance with the first amendment to the Constitution of the
35 United States and with Code chapter 261H.

1 If, after the exhaustion of administrative or judicial
2 appeals, it is determined that a student government
3 organization knowingly and intentionally violated the first
4 amendment rights of a member of the campus community or that
5 an action of a student government organization violated the
6 provisions of the bill, the institution shall suspend the
7 student government organization's authority to manage and
8 disburse student fees for two years. During this period of
9 suspension, such student fees shall be managed and disbursed
10 by the institution.

11 The state board of regents must annually appoint from among
12 its membership a three-member nonpartisan free speech appeals
13 committee to receive complaints under Code section 261H.5
14 relating to the institutions of higher learning governed by the
15 state board.

16 The bill may include a state mandate as defined in Code
17 section 25B.3. The bill makes inapplicable Code section 25B.2,
18 subsection 3, which would relieve a political subdivision from
19 complying with a state mandate if funding for the cost of
20 the state mandate is not provided or specified. Therefore,
21 political subdivisions are required to comply with any state
22 mandate included in the bill.