

AMENDMENT TO DIVISION A OF RULES
COMMITTEE PRINT 117-12
OFFERED BY MR. MURPHY OF NORTH CAROLINA

At the end of division A (before the short title), insert the following:

1 PROTECTION OF STUDENT SPEECH AND ASSOCIATION

2 RIGHTS

3 SEC. 528.

4 Section 112(a) of the Higher Education Act of 1965
5 (20 U.S.C. 1011a(a)) is amended—

6 (1) by redesignating paragraph (2) as para-
7 graph (3); and

8 (2) by inserting after paragraph (1) the fol-
9 lowing:

10 “(2) It is the sense of Congress that—

11 “(A) every individual should be free to profess,
12 and to maintain, the opinion of such individual in
13 matters of religion or philosophy, and that pro-
14 fessing or maintaining such opinion should in no
15 way diminish, enlarge, or affect the civil liberties or
16 rights of such individual on the campus of an insti-
17 tution of higher education;

1 “(B) no public institution of higher education
2 directly or indirectly receiving financial assistance
3 under this Act should limit religious expression, free
4 expression, or any other rights provided under the
5 First Amendment to the Constitution of the United
6 States;

7 “(C) free speech zones and restrictive speech
8 codes are inherently at odds with the freedom of
9 speech guaranteed by the First Amendment to the
10 Constitution of the United States;

11 “(D) bias reporting systems are susceptible to
12 abuses that may put them at odds with the freedom
13 of speech guaranteed by the First Amendment to the
14 Constitution of the United States; and

15 “(E) no public institution of higher education
16 directly or indirectly receiving financial assistance
17 under this Act should restrict the speech of such in-
18 stitution’s students through improperly restrictive
19 zones, codes, or bias reporting systems.”.

20 CAMPUS SPEECH POLICIES AT INSTITUTIONS OF HIGHER
21 EDUCATION

22 SEC. 529.

23 Title IV of the Higher Education Act of 1965 (20
24 U.S.C. 1070 et. seq.) is amended—

25 (1) in section 487(a), by adding at the end the
26 following:

1 “(30)(A) In the case of a public institution
2 (other than an institution described in section
3 494B(b)(4)), the institution will comply with the ex-
4 pressive activity protections described in section
5 494B.

6 “(B) In the case of a private institution (other
7 than an institution described in section 494C(e)),
8 the institution will comply with the expressive activ-
9 ity requirements described in section 494C.”; and
10 (2) in part G, by adding at the end the fol-
11 lowing:

12 **“SEC. 494B. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**
13 **SITIES.**

14 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

15 “(1) IN GENERAL.—In this section, the term
16 ‘expressive activity’ includes—

17 “(A) peacefully assembling, protesting,
18 speaking, or listening;

19 “(B) distributing literature;

20 “(C) carrying a sign;

21 “(D) circulating a petition; or

22 “(E) other expressive rights guaranteed
23 under the First Amendment to the Constitution
24 of the United States, including religious rights.

1 “(2) EXCLUSIONS.—In this section, the term
2 ‘expressive activity’ does not include unprotected
3 speech (as defined by the precedents of the Supreme
4 Court of the United States).

5 “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

6 “(1) IN GENERAL.—Each public institution of
7 higher education participating in a program under
8 this title may not prohibit, subject to paragraph (2),
9 a person from freely engaging in noncommercial ex-
10 pressive activity in a generally accessible area on the
11 institution’s campus if the person’s conduct is law-
12 ful.

13 “(2) RESTRICTIONS.—An institution of higher
14 education described in paragraph (1) may not main-
15 tain or enforce time, place, or manner restrictions on
16 an expressive activity in a generally accessible area
17 of the institution’s campus unless the restriction—

18 “(A) is necessary to achieve a compelling
19 governmental interest;

20 “(B) is the least restrictive means of fur-
21 thering that compelling governmental interest;

22 “(C) is based on published, content-neu-
23 tral, and viewpoint-neutral criteria;

24 “(D) leaves open ample alternative chan-
25 nels for communication; and

1 “(E) provides for spontaneous assembly
2 and distribution of literature.

3 “(3) APPLICATION.—The protections provided
4 under paragraph (1) do not apply to expressive ac-
5 tivity in an area on an institution’s campus that is
6 not a generally accessible area.

7 “(4) NONAPPLICATION TO SERVICE ACAD-
8 EMIES.—This section shall not apply to an institu-
9 tion of higher education whose primary purpose is
10 the training of individuals for the military services
11 of the United States, or the merchant marine.

12 “(c) CAUSES OF ACTION.—

13 “(1) AUTHORIZATION.—The following persons
14 may bring an action in a Federal court of competent
15 jurisdiction to enjoin a violation of subsection (b) or
16 to recover compensatory damages, reasonable court
17 costs, or reasonable attorney fees:

18 “(A) The Attorney General.

19 “(B) A person claiming that the person’s
20 expressive activity rights, as described in sub-
21 section (b)(1), were violated.

22 “(2) ACTIONS.—Notwithstanding any other
23 provision of law, in an action brought under this sec-
24 tion, the Federal court shall decide de novo all rel-
25 evant questions of fact and law, including the inter-

1 pretation of constitutional, statutory, and regulatory
2 provisions, unless the parties stipulate otherwise. In
3 an action brought under this subsection, if the court
4 finds a violation of subsection (b), the court—

5 “(A) shall—

6 “(i) enjoin the violation; and

7 “(ii) if a person whose expressive ac-
8 tivity rights were violated brought the ac-
9 tion, award the person—

10 “(I) not less than \$500 for an
11 initial violation; and

12 “(II) if the person notifies the in-
13 stitution of the violation, \$50 for each
14 day the violation continues after the
15 notification if the institution did not
16 act to discontinue the cause of the
17 violation; and

18 “(B) may award a prevailing plaintiff—

19 “(i) compensatory damages;

20 “(ii) reasonable court costs; or

21 “(iii) reasonable attorney fees.

22 “(3) BASIS FOR ENACTMENT.—This subsection
23 is enacted as an exercise of the enforcement power
24 of the Congress under section 5 of the Fourteenth

1 Amendment to the Constitution to protect expressive
2 activities.

3 “(d) STATUTE OF LIMITATIONS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (3), an action under subsection (c) may not
6 be brought later than 1 year after the date of the
7 violation.

8 “(2) CONTINUING VIOLATION.—Each day that
9 a violation of subsection (b) continues after an ini-
10 tial violation of subsection (b), and each day that an
11 institution’s policy in violation of subsection (b) re-
12 mains in effect, shall constitute a continuing viola-
13 tion of subsection (b).

14 “(3) EXTENSION.—For a continuing violation
15 described in paragraph (2), the limitation described
16 in paragraph (1) shall extend to 1 year after the
17 date on which the most recent violation occurs.

18 “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

19 “(1) NO ELIGIBILITY FOR FUNDS.—

20 “(A) IN GENERAL.—No public institution
21 of higher education shall be eligible to receive
22 funds under this Act, including participation in
23 any program under this title, if the Secretary
24 determines that the institution—

1 “(i) maintains a policy that infringes
2 upon the expressive rights of students
3 under the First Amendment to the Con-
4 stitution of the United States; or

5 “(ii) maintains or enforces time,
6 place, or manner restrictions on an expres-
7 sive activity in a generally accessible area
8 of the institution’s campus that do not
9 comply with subparagraphs (A) through
10 (E) of subsection (b)(2).

11 “(B) PROHIBITION.—The Secretary may
12 not conduct an investigation for purposes of
13 making a determination under subparagraph
14 (A) with respect to an institution of higher edu-
15 cation, unless such an investigation is con-
16 ducted under paragraph (4) with respect to a
17 complaint received under paragraph (2).

18 “(C) COURT REVIEW.—Notwithstanding
19 any other provision of law, the Secretary’s de-
20 terminations under this subsection shall be re-
21 viewed de novo with respect to all relevant ques-
22 tions of fact and law, including the interpreta-
23 tion of constitutional, statutory, and regulatory
24 provisions, unless the parties stipulate other-
25 wise.

1 “(2) DESIGNATION OF AN EMPLOYEE TO RE-
2 CEIVE COMPLAINTS.—The Secretary shall designate
3 an employee in the Office of Postsecondary Edu-
4 cation of the Department to receive complaints
5 (whether electronically or by mail) from students or
6 student organizations at a given public institution of
7 higher education, or from any other person or orga-
8 nization, regarding policies at the institution that
9 meet the description of clause (i) or (ii) of para-
10 graph (1)(A).

11 “(3) COMPLAINT.—A complaint submitted
12 under subparagraph (2)—

13 “(A) shall include the provision of the in-
14 stitution’s policy the complainant believes meets
15 the description of clause (i) or (ii) of paragraph
16 (1)(A), along with any evidence regarding the
17 operation and enforcement of such policy the
18 complainant deems relevant; and

19 “(B) may include an argument and any
20 other supplemental information as to why the
21 policy in question meets such description.

22 “(4) SYSTEM OF REVIEW.—

23 “(A) FIRST STAGE REVIEW.—

24 “(i) REQUEST FOR RESPONSE.—Not
25 later than 7 days after the date of receipt

1 of a complaint under paragraph (2), the
2 Secretary shall review the complaint and
3 request a response to the complaint from
4 the institution.

5 “(ii) INSTITUTION RESPONSE.—Not
6 later than 30 days after the date the Sec-
7 retary requests a response under clause (i),
8 the institution shall—

9 “(I) certify to the Secretary that
10 the institution has entirely withdrawn
11 the policy that occasioned the com-
12 plaint;

13 “(II) submit a revised policy for
14 review by the Secretary; or

15 “(III) submit a defense of the
16 policy that occasioned the complaint.

17 “(iii) AVAILABILITY TO COMPLAIN-
18 ANT.—

19 “(I) IN GENERAL.—Not later
20 than 7 days after the date of receipt
21 of a revised policy or defense of the
22 original policy as submitted by the in-
23 stitution pursuant to clause (ii), the
24 Secretary shall make available to the

1 complainant a copy of such revised
2 policy or defense.

3 “(II) RESPONSE BY COMPLAIN-
4 ANT.—Not later than 60 days after
5 the date of receipt of a revised policy
6 or defense of the original policy under
7 subclause (I), the complainant may
8 submit to the Secretary a response to
9 the revised policy or defense of the
10 original policy.

11 “(III) SUBMISSION TO THE IN-
12 STITUTION OF RESPONSE.—Not later
13 than 7 days after the date of receipt
14 of a response under subclause (II),
15 the Secretary shall submit to the in-
16 stitution a copy of such response.

17 “(iv) DETERMINATIONS.—If the insti-
18 tution declines to entirely withdraw the
19 policy that occasioned the complaint and
20 either submits a revised policy for review
21 or submits a defense of the policy that oc-
22 casioned the complaint, the Secretary shall,
23 not later than 60 days after the date of the
24 deadline for a response by the complaint as

1 described in clause (iii)(II), make one of
2 the following determinations:

3 “(I) Determine that the com-
4 plaint in question has insufficient
5 merit to proceed to Second Stage Re-
6 view described in subparagraph (B).

7 “(II) Determine that the com-
8 plaint in question has sufficient merit
9 to proceed to Second Stage Review
10 described in subparagraph (B).

11 “(v) NOTIFICATION.—Not later than
12 7 days after the date the Secretary makes
13 a determination under clause (iv), the Sec-
14 retary shall notify the institution and the
15 complainant of such determination.

16 “(vi) END.—The determination under
17 clause (iv) shall constitute the end of First
18 Stage Review.

19 “(B) SECOND STAGE REVIEW.—

20 “(i) IN GENERAL.—In a Second Stage
21 Review, the Secretary shall notify the insti-
22 tution and the complainant of the com-
23 mencement of the Second Stage Review,
24 and shall give the institution the option of
25 entirely withdrawing the policy that occa-

1 sioned the complaint or submitting a re-
2 vised policy for review within 30 days of
3 the commencement of the Second Stage
4 Review. In such notification submitted to
5 the institution and complainant, the Sec-
6 retary shall indicate the relevant sections
7 of the institution’s policy in question and
8 explain why these sections may be out of
9 compliance.

10 “(ii) DETERMINATION.—Not later
11 than 90 days from the commencement of
12 the Second Stage Review, the Secretary
13 shall determine whether the policy that oc-
14 casioned the complaint, or the revised pol-
15 icy submitted during the First Stage Re-
16 view, or the revised policy submitted within
17 the first 30 days of the Second Stage Re-
18 view, is in violation of student rights under
19 the First Amendment to the Constitution
20 of the United States or of the restrictions
21 on the regulation of speech by time, place,
22 and manner set forth in this section, there-
23 by ending Second Stage Review.

24 “(iii) INVESTIGATION.—During Sec-
25 ond Stage Review, the Secretary may con-

1 duct an investigation in which further in-
2 formation may be sought or requested
3 from the complainant, the institution, or
4 any other pertinent source.

5 “(iv) CERTIFICATION OF WITH-
6 DRAWAL.—At any point during the Second
7 Stage Review, the institution in question
8 may certify to the Secretary that it has en-
9 tirely withdrawn the policy that occasioned
10 the complaint, thereby ending the Second
11 Stage Review.

12 “(v) NOTIFICATION AND JUSTIFICA-
13 TION.—If the Secretary determines by the
14 conclusion of Second Stage Review that
15 the policy that occasioned the complaint or
16 the revised policy submitted for review dur-
17 ing First Stage Review or Second Stage
18 Review is consistent with the expressive
19 rights of students under the First Amend-
20 ment to the Constitution of the United
21 States and the restrictions on the regula-
22 tion of speech by time, place, and manner
23 set forth in this Act—

24 “(I) the Secretary shall notify the
25 complainant and the institution of

1 such determination not more than 7
2 days after the date of the determina-
3 tion; and

4 “(II) the Secretary shall explain
5 and justify such determination in a
6 written decision citing relevant legal
7 precedent, copies of which shall be
8 sent to the complainant, the institu-
9 tion, the authorizing committees, and
10 made available for public inspection,
11 including for online reading by the
12 public.

13 “(C) DETERMINATION THAT INSTITUTION
14 IS OUT OF COMPLIANCE.—

15 “(i) IN GENERAL.—If, upon comple-
16 tion of the Second Stage Review, the Sec-
17 retary determines that the policy that occa-
18 sioned the complaint, or the revised policy
19 submitted for review during the First
20 Stage Review or Second Stage Review, vio-
21 lates the First Amendment to the Con-
22 stitution of the United States or the re-
23 strictions on the regulation of speech set
24 forth in this section, the Secretary shall
25 notify the complainant and the institution

1 not more than 7 days after the date of
2 completion of Second Stage Review that
3 the institution is out of compliance with
4 the requirements for receiving funds under
5 this Act, including participation in any
6 program under this title, but will be grant-
7 ed a grace period of 120 days to return to
8 compliance before being formally stripped
9 of eligibility.

10 “(ii) POSTING; EXPLANATION; FINAL
11 REVIEW.—As part of the notification under
12 clause (i), the Secretary shall—

13 “(I) require the institution to
14 post the determination of the Sec-
15 retary on the website of the institu-
16 tion within 2 clicks of the homepage,
17 without a paywall, email login, or
18 other restriction to access;

19 “(II) explain and justify the de-
20 termination of the Secretary in a writ-
21 ten decision citing relevant legal
22 precedent, copies of which shall be
23 sent to the complainant, the institu-
24 tion, the authorizing committees, and
25 made available for public inspection,

1 including for online reading by the
2 public; and

3 “(III) inform the institution that
4 Final Review has begun and that the
5 institution must either certify to the
6 Secretary that it has entirely with-
7 drawn the policy that occasioned the
8 complaint, or submit a revised policy
9 for review to the Secretary not later
10 than 60 days after the date of receipt
11 of notice of the conclusion of Second
12 Stage Review.

13 “(D) FINAL REVIEW.—

14 “(i) IN GENERAL.—If an institution
15 submits a revised policy for review as de-
16 scribed in subparagraph (C)(ii)(III), the
17 Secretary shall review such revised policy
18 and determine not later than 120 days
19 after the date of commencement of Final
20 Review whether the revised policy is con-
21 sistent with the expressive rights of stu-
22 dents under the First Amendment to the
23 Constitution of the United States and with
24 the restrictions on the regulation of speech

1 by time, place, and manner set forth in
2 this section.

3 “(ii) DETERMINATION OF COMPLI-
4 ANCE.—If the Secretary determines, as de-
5 scribed in clause (i), that the revised policy
6 is consistent with the expressive rights of
7 students under the First Amendment to
8 the Constitution of the United States and
9 with the restrictions on the regulation of
10 speech by time, place, and manner set
11 forth in this section, the Secretary shall
12 notify the complainant and the institution
13 of such determination not more than 7
14 days after the date the determination is
15 made, thereby ending the final Stage Re-
16 view.

17 “(iii) DETERMINATION OF VIOLA-
18 TION.—If the Secretary determines, as de-
19 scribed in clause (i), that the revised policy
20 violates the expressive rights of students
21 under the First Amendment to the Con-
22 stitution of the United States or the re-
23 strictions on the regulation of speech by
24 time, place, and manner set forth in this
25 section, the Secretary shall—

1 “(I) notify the complainant and
2 the institution of such determination
3 not more than 7 days after the date
4 the determination is made, thereby
5 ending the final Stage Review; and

6 “(II) explain and justify the de-
7 termination in a written decision cit-
8 ing relevant legal precedent, copies of
9 which shall be sent to the complain-
10 ant, the institution, and made avail-
11 able for public inspection, including
12 for online reading by the public.

13 “(E) LOSS OF ELIGIBILITY.—

14 “(i) IN GENERAL.—If the Secretary
15 determines, during the Final Stage Review,
16 that the institution’s policy in question vio-
17 lates the expressive rights of students
18 under the First Amendment to the Con-
19 stitution of the United States or the re-
20 strictions on the regulation of speech by
21 time, place, and manner set forth in this
22 section, the Secretary shall—

23 “(I) notify the complainant and
24 the institution not more than 7 days
25 after the date of the determination

1 that the institution will lose eligibility
2 to receive funds under this Act, in-
3 cluding participation in any program
4 under this title, in accordance with
5 this subparagraph;

6 “(II) notify the institution that
7 the loss of eligibility shall take effect
8 beginning with any student notified of
9 acceptance for admission to the insti-
10 tution during the award year subse-
11 quent to the award year during which
12 the determination is made, and that
13 no restoration of eligibility for ineli-
14 gible students in subsequent award
15 years will occur prior to the beginning
16 of the third award year subsequent to
17 the award year during which the de-
18 termination is made;

19 “(III) explain and justify the de-
20 termination in a written decision cit-
21 ing relevant legal precedent, copies of
22 which shall be sent to the complain-
23 ant, the institution, the authorizing
24 committees, and made available for

1 public inspection, including for online
2 reading by the public; and

3 “(IV) require the institution to
4 post the determination of the Sec-
5 retary on the website of the institu-
6 tion, within two clicks of the home-
7 page, without a paywall, email login,
8 or other restriction to access.

9 “(ii) CONTINUED ELIGIBILITY.—Each
10 student enrolled at the institution during
11 the award year in which eligibility is lost
12 as described in this subparagraph, and
13 each student notified of acceptance for ad-
14 mission to the institution during the award
15 year in which eligibility is lost as described
16 in this subparagraph, shall continue to be
17 eligible to participate, through the institu-
18 tion, in programs funded under this Act
19 during the 3-year period after the date of
20 the loss of eligibility.

21 “(F) RESTORATION OF ELIGIBILITY.—

22 “(i) IN GENERAL.—Not later than 7
23 days after the loss of eligibility under sub-
24 paragraph (E), the Secretary shall inform
25 the institution that the institution may re-

1 store eligibility, either by certifying to the
2 Secretary that the institution has entirely
3 withdrawn the policy that precipitated loss
4 of eligibility, or by submitting a revised
5 policy for review at any time following the
6 failure of the Final Review.

7 “(ii) REVIEW OF REVISED POLICY.—
8 The Secretary shall review a revised policy
9 submitted for review after the loss of eligi-
10 bility and determine not later than 120
11 days after the date the revised policy is
12 submitted whether such policy is consistent
13 with the expressive rights of students
14 under the First Amendment to the Con-
15 stitution of the United States and with the
16 restrictions on the regulation of speech by
17 time, place, and manner set forth in this
18 Act.

19 “(iii) INVESTIGATION.—While con-
20 ducting a review to restore eligibility under
21 this subparagraph, the Secretary may con-
22 duct an investigation in which further in-
23 formation may be sought or requested
24 from the institution, or any other source
25 the Secretary determines pertinent.

1 “(iv) WRITTEN DECISION.—In making
2 a determination of whether a revised policy
3 submitted for review after the loss of eligi-
4 bility is either consistent or inconsistent
5 with the expressive rights of students
6 under the First Amendment to the Con-
7 stitution of the United States and with the
8 restrictions on the regulation of speech by
9 time, place, and manner set forth in this
10 Act, the Secretary shall explain and justify
11 the determination in a written decision cit-
12 ing relevant legal precedent, copies of
13 which shall be sent to the complainant, the
14 institution, the authorizing committees,
15 and made available for public inspection,
16 including for online reading by the public.

17 “(v) LIMIT ON REVIEW.—The Sec-
18 retary may conduct not more than 1 review
19 to restore eligibility for a single institution
20 in any given award year.

21 “(vi) RESTORATION.—If an institu-
22 tion certifies to the Secretary that the pol-
23 icy that precipitated the loss of eligibility
24 has been entirely withdrawn, or if Sec-
25 retary determines that the revised policy

1 submitted for review is consistent with the
2 expressive rights of students under the
3 First Amendment to the Constitution of
4 the United States and with the restrictions
5 on the regulation of speech by time, place,
6 and manner set forth in this section, the
7 institution's eligibility to receive funds
8 under this Act, including participation in
9 any program under this title, shall be re-
10 stored not earlier than the beginning of the
11 third award year following the year in
12 which notification of loss of eligibility was
13 received.

14 “(G) GOOD FAITH REPRESENTATION.—

15 “(i) IN GENERAL.—The Secretary
16 shall inform any institution undergoing re-
17 view of its campus speech policies that it
18 expects the institution to represent its poli-
19 cies, along with any proposed revisions in
20 such policies, in good faith.

21 “(ii) MISREPRESENTATION.—

22 “(I) COMPLAINTS.—A student,
23 student organization, or any other
24 person or organization may file, with
25 the employee in the Office of Postsec-

1 ondary Education of the Department
2 designated by the Secretary under
3 paragraph (2) to receive complaints, a
4 complaint that an institution has sub-
5 stantially misrepresented its speech
6 policies, or withheld information re-
7 quested by the Secretary during an
8 investigation, or attempted to cir-
9 cumvent the review process by reinsti-
10 tuting a policy under review in a sub-
11 stantially similar form without inform-
12 ing the Secretary.

13 “(II) LOSS OF ELIGIBILITY.—If
14 the Secretary determines upon inves-
15 tigation, or after receiving a complaint
16 under subclause (I), that an institu-
17 tion has substantially misrepresented
18 its speech policies, or withheld infor-
19 mation requested by the Secretary
20 during an investigation, or attempted
21 to circumvent the review process by
22 reinstating a policy under review in
23 a substantially similar form without
24 informing the Secretary, the institu-
25 tion shall lose eligibility to receive

1 funds under this Act, including par-
2 ticipation in any program under this
3 title.

4 “(iii) LOSS OF ELIGIBILITY.—If an in-
5 stitution loses eligibility under clause (ii),
6 the Secretary shall notify the institution,
7 not later than 7 days after the determina-
8 tion, that the loss of eligibility shall take
9 effect beginning with any student notified
10 of acceptance for admission to the institu-
11 tion during the award year subsequent to
12 the award year during which the deter-
13 mination is made, and that no restoration
14 of eligibility for students admitted in sub-
15 sequent award years will occur prior to the
16 beginning of the third award year subse-
17 quent to the award year during which the
18 determination is made.

19 “(f) RETALIATION PROHIBITED.—

20 “(1) IN GENERAL.—No person may intimidate,
21 threaten, coerce, or discriminate against any indi-
22 vidual because the individual has made a report or
23 complaint, testified, assisted, or participated or re-
24 fused to participate in any manner in an investiga-
25 tion, proceeding, or hearing under this section.

1 “(2) SPECIFIC CIRCUMSTANCES.—

2 “(A) EXERCISE OF FIRST AMENDMENT
3 RIGHTS.—The exercise of rights protected
4 under the First Amendment to the Constitution
5 of the United States does not constitute retalia-
6 tion prohibited under paragraph (1).

7 “(B) CODE OF CONDUCT VIOLATION FOR
8 MATERIALLY FALSE STATEMENT.—Charging an
9 individual with a code of conduct violation for
10 making a materially false statement in bad
11 faith in the course of a grievance proceeding
12 under this section does not constitute retalia-
13 tion prohibited under paragraph (1). A deter-
14 mination regarding responsibility, alone, is not
15 sufficient to conclude that any party made a
16 materially false statement in bad faith.

17 “(g) JUDICIAL REVIEW.—A public institution of
18 higher education participating in a program under this
19 title may seek judicial review of an agency action under
20 this section in accordance with chapter 7 of title 5, United
21 States Code.

1 **“SEC. 494C. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**
2 **VERSITIES.**

3 “(a) IN GENERAL.—Each private institution of high-
4 er education eligible to receive funds under this Act, in-
5 cluding any program under this title, shall—

6 “(1) post in one place on the website of the in-
7 stitution all policies that pertain to the protection
8 and regulation of the expressive rights of students,
9 including the right to submit a complaint under this
10 section, within 2 clicks of the homepage, without a
11 paywall, email login, or other restriction to access;
12 and

13 “(2) include a copy of such policies in a hand-
14 book distributed to new students.

15 “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-
16 SURE.—Each private institution of higher education de-
17 scribed in subsection (a) shall include with the copy of the
18 policies described in subsection (a)—

19 “(1) a statement affirming that all policies per-
20 tinent to the protection and regulation of the expres-
21 sive rights of students have been disclosed in the
22 manner required by this section; and

23 “(2) a statement affirming that publication of
24 such policies as required by this section and instruc-
25 tions for students on how to contact the employee
26 designated in the Office of Postsecondary Education

1 in the Department under subsection (d)(1) to file a
2 complaint.

3 “(c) CAUSE OF ACTION.—

4 “(1) AUTHORIZATION.—A student claiming
5 that a private institution of higher education in
6 which the student is enrolled has violated published
7 policy regarding expressive rights imposed by this
8 section may bring an action in a Federal court of
9 competent jurisdiction to enjoin such violation or to
10 recover compensatory damages, reasonable court
11 costs, or reasonable attorney fees.

12 “(2) ACTIONS.—Notwithstanding any other
13 provision of law, in an action brought under this
14 subsection, the Federal court shall decide de novo all
15 relevant questions of fact and law, including the in-
16 terpretation of constitutional, statutory, and regu-
17 latory provisions, unless the parties stipulate other-
18 wise. In an action brought under this subsection, if
19 the court finds a violation of subsection (b), the
20 court—

21 “(A) shall—

22 “(i) enjoin the violation; and

23 “(ii) award the student—

24 “(I) not less than \$500 for an
25 initial violation; and

1 “(II) if the student notifies the
2 institution of the violation, \$50 for
3 each day the violation continues after
4 the notification if the institution did
5 not act to discontinue the cause of the
6 violation; and

7 “(B) may award a prevailing plaintiff—

8 “(i) compensatory damages;

9 “(ii) reasonable court costs; or

10 “(iii) reasonable attorney fees.

11 “(d) SECRETARIAL REQUIREMENTS.—

12 “(1) DESIGNATION OF AN EMPLOYEE.—The
13 Secretary shall designate an employee in the Office
14 of Postsecondary Education in the Department who
15 shall—

16 “(A) receive copies of all complaints per-
17 taining to the protection and regulation of the
18 expressive rights of students at private institu-
19 tions of higher education that receive funds
20 under this section, including any programs
21 under this title;

22 “(B) preserve all records of such policies
23 for a period of not less than 10 years;

24 “(C) receive complaints from students, stu-
25 dent organizations, or from any other person or

1 organization, that believes a private institution
2 of higher education has not disclosed a policy
3 pertaining to the protection and regulation of
4 the expressive rights of students as required by
5 this section, is enforcing a policy pertaining to
6 the expressive rights of students that has not
7 been disclosed as required by this section, or
8 has failed to make a full policy disclosure, for
9 the enforcement of speech policies, as required
10 by this section;

11 “(D) not more than 7 days after the date
12 of receipt of a complaint under subparagraph
13 (C), review the complaint and request a re-
14 sponse from the institution;

15 “(E) undertake an investigation, in re-
16 sponse to a complaint under subparagraph (C),
17 to determine whether a private institution of
18 higher education has failed to disclose a policy
19 pertaining to the protection and regulation of
20 the expressive rights of students as required by
21 this section or is enforcing a policy pertaining
22 to the expressive rights of students that has not
23 been disclosed as required by this section; and

24 “(F) determine, not later than 120 days
25 after the date of receipt of a complaint, whether

1 the private institution of higher education in
2 question has failed to disclose a policy per-
3 taining to the protection and regulation of the
4 expressive rights of students as required by this
5 section or is enforcing a policy pertaining to the
6 expressive rights of students that has not been
7 disclosed as required by this section.

8 “(2) LOSS OF ELIGIBILITY.—

9 “(A) IN GENERAL.—If the Secretary deter-
10 mines that a private institution of higher edu-
11 cation has failed to disclose a policy pertaining
12 to the protection and regulation of the expres-
13 sive rights of students as required by this sec-
14 tion or is enforcing a policy pertaining to the
15 expressive rights of students that has not been
16 disclosed as required by this section, the Sec-
17 retary shall notify the institution and the com-
18 plainant, not more than 7 days after the date
19 of such determination, that the institution is
20 out of compliance with the requirements for re-
21 ceiving funds under this Act, including partici-
22 pation in any program under this title, but will
23 be granted a grace period of 60 days to return
24 to compliance before formally losing eligibility

1 for receiving funds under this Act, including
2 participation in any program under this title.

3 “(B) SPECIFICATIONS IN NOTIFICATION.—
4 As part of the notification under subparagraph
5 (A), the Secretary shall specify which policies
6 need to be disclosed and published in order for
7 eligibility to be restored.

8 “(C) NOTIFICATION OF LOSS OF ELIGI-
9 BILITY.—

10 “(i) IN GENERAL.—If the Secretary
11 determines that, 60 days after being noti-
12 fied that the institution is out of compli-
13 ance as described in subparagraph (A), the
14 institution has failed to return to compli-
15 ance by making the appropriate speech
16 policy disclosures, the Secretary shall no-
17 tify the institution and the complainant,
18 not more than 7 days after the date of
19 such determination—

20 “(I) that the institution will lose
21 eligibility to receive funds under this
22 Act, including participation in any
23 program under this title;

24 “(II) that the loss of eligibility
25 shall take effect beginning with any

1 student notified of acceptance for ad-
2 mission to the institution during the
3 award year subsequent to the award
4 year during which the determination
5 is made, and that no restoration of
6 eligibility for ineligible students in
7 subsequent years will occur prior to
8 the beginning of the third award year
9 subsequent to the award year during
10 which the determination is made; and

11 “(III) that the institution shall
12 post the determination of the Sec-
13 retary on the website of the institu-
14 tion, within two clicks of the home-
15 page, without a paywall, email login,
16 or other restriction to access.

17 “(ii) CONTINUED ELIGIBILITY.—Each
18 student enrolled at the institution during
19 the award year in which eligibility is lost
20 as described in this subparagraph, and
21 each student notified of acceptance for ad-
22 mission to the institution during the award
23 year in which eligibility is lost as described
24 in this subparagraph, shall continue to be
25 eligible to participate, through the institu-

1 tion, in programs funded under this Act
2 during the 3-year period after the date of
3 the loss of eligibility.

4 “(3) RESTORATION OF ELIGIBILITY.—

5 “(A) IN GENERAL.—Not later than 7 days
6 after the loss of eligibility under paragraph (2),
7 the Secretary shall inform the institution that
8 the institution may restore eligibility by making
9 the appropriate speech policy disclosures, as di-
10 rected by the Secretary in conformity with this
11 section.

12 “(B) REVIEW.—The Secretary shall review
13 any policy disclosures and determine whether
14 the policy disclosures are sufficient to restore
15 eligibility for receiving funds under this Act, in-
16 cluding participation in any program under this
17 title, not later than 120 days after the date of
18 receipt of such disclosures or statement.

19 “(C) INVESTIGATION.—While conducting a
20 review to restore eligibility under this para-
21 graph, the Secretary may conduct an investiga-
22 tion in which further information may be
23 sought or requested from the institution, or
24 other source pertinent to the case.

1 “(D) RESTORATION.—If the Secretary de-
2 termines that the institution under review to re-
3 store eligibility under this paragraph has made
4 the policy disclosures as required by this sec-
5 tion, the institution’s eligibility to receive funds
6 under this Act, including participation in any
7 program under this title, shall be restored not
8 earlier than the beginning of the third award
9 year following the year in which notification of
10 loss of eligibility was received.

11 “(E) LIMIT ON REVIEW.—The Secretary
12 may conduct not more than 1 review to restore
13 eligibility for a single institution in any given
14 award year.

15 “(4) PROHIBITION.—The Secretary may not
16 conduct an investigation under this subsection for
17 purposes of making a determination under para-
18 graph (2)(A) with respect to an institution of higher
19 education, unless such an investigation is conducted
20 with respect to a complaint received under para-
21 graph (1).

22 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—
23 This section shall not apply to an institution of higher
24 education that is controlled by a religious organization.

1 “(f) JUDICIAL REVIEW.—A private institution of
2 higher education participating in a program under this
3 title may seek judicial review of an agency action under
4 this section in accordance with chapter 7 of title 5, United
5 States Code.”.

