



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4719/1

ARG:amn

2023 SENATE BILL 575

October 30, 2023 - Introduced by Senators CABRAL-GUEVARA and TOMCZYK, cosponsored by Representatives NEDWESKI, MURPHY, ALLEN, BEHNKE, BRANDTJEN, DITTRICH, EDMING, GOEBEN, GUNDRUM, MAXEY, MOSES, O'CONNOR, PENTERMAN, RETTINGER, SCHRAA and TUSLER. Referred to Committee on Universities and Revenue.

AN ACT *to amend* 36.11 (6) (c) and 38.04 (7m); and *to create* 36.41, 36.42, 38.34, 38.35 and 39.285 (1) (c) of the statutes; **relating to:** free speech and academic freedom at University of Wisconsin System institutions and technical colleges, due process in disciplinary proceedings at University of Wisconsin System institutions and technical colleges, Wisconsin grant funding allocation, and causes of action against the Board of Regents of the University of Wisconsin System and technical college district boards.

Analysis by the Legislative Reference Bureau

This bill establishes certain standards related to free speech and academic freedom at University of Wisconsin System institutions and technical colleges. For violation of these standards, the Board of Regents of the UW System or technical college district board may be subject to a civil cause of action and must provide certain public notice of the violation.

The bill also establishes certain due process standards in disciplinary proceedings at UW System institutions and technical colleges. For violation of

SENATE BILL 575

these standards, a UW institution or technical college may become ineligible for Wisconsin grant funding allocation.

FREE SPEECH AND ACADEMIC FREEDOM***First Amendment protections***

Under the bill, a UW institution or technical college may not do any of the following: 1) restrict speech protected under the First Amendment, if the speaker's conduct is not unlawful and does not materially and substantially disrupt the functioning of the UW institution or technical college; 2) maintain and enforce time, place, and manner restrictions on expressive activities on the publicly accessible, open outdoor areas of its campus and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, unless those restrictions meet specified requirements; 3) designate any area of a campus a "free speech zone" or otherwise create policies restricting noncommercial expressive activities to a particular area of a campus; 4) subject to an exception, require a permit as a condition of being allowed to engage in expressive activities protected under the bill; 5) charge security fees, as part of a permit application, based on the content of expression or anticipated reaction; or 6) sanction individuals or groups for discriminatory harassment unless the speech targets its victim on the basis of a protected class under law, and is so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits. Under the bill, if a permit is required, the permitting process and any security fee must be content and viewpoint neutral.

The bill also specifies that all of an institution's or technical college's indoor areas that have been designated as public forums and publicly accessible outdoor areas, except classrooms while they are in use for instructional purposes, are governed by rules applicable to traditional public forums. The bill specifies that its provisions do not 1) enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity in a campus space reserved for that activity; or 2) limit the right of student expression at campus locations not specified in the bill.

The bill requires an institution or technical college to do all of the following: 1) conduct a survey biennially of students and employees on First Amendment rights, academic freedom, perceived political or other bias at the institution or technical college, and whether campus culture promotes self-censorship; 2) submit a report biennially to the legislature detailing the results of this survey; and 3) annually provide all students and employees with instruction in academic freedom, due process, and First Amendment protections.

Academic freedom

Under the bill, a UW or technical college policy or employee may not limit the expressive rights and academic freedom of an instructor to 1) conduct research, publish, lecture, or teach in the academic setting; 2) require students to participate in instructional exercises with legitimate pedagogical purposes that involve

SENATE BILL 575

exploring, or arguing for or against, any argument or assertion; or 3) speak publicly as a private citizen on matters of public concern.

Principles

The bill sets forth principles of academic freedom and freedom of expression to which the UW System and each institution must adhere, as well as UW System and institution responsibilities associated with these principles.

Notice and cause of action

The bill requires a UW institution or technical college that is found by a state or federal court, by a preponderance of the evidence, to have violated any of the free speech or academic freedom provisions described above to include, for four years, the following disclaimer on all notices to individuals regarding admission to the UW institution or technical college: "NOTICE: We are required by the State of Wisconsin to inform you that within the last four years ... [insert name of UW institution or technical college] has violated the free speech or academic freedom provisions in the Wisconsin statutes."

Under the bill, the attorney general, a district attorney, or any person whose expressive rights were violated may bring a court action against the Board of Regents of the UW System or the technical college district board for violation by a UW institution or technical college of any of the free speech or academic freedom provisions described above and may seek an injunction and recovery of damages, court costs, and attorney fees for persons aggrieved by the violation. In such an action, if the court finds a violation, the court must award to the plaintiffs all of the following: 1) total damages for all prevailing persons aggrieved by the violation of not less than \$500 for the initial violation plus \$50 for each day after the complaint is served that the violation remains ongoing, but not exceeding an aggregate amount of \$100,000 for all cases stemming from a single controversy; and 2) court costs and reasonable attorney fees. An award to the plaintiffs of damages, court costs, or attorney fees must be paid from the UW institution's or technical college's administrative expense moneys.

DUE PROCESS IN DISCIPLINARY PROCEEDINGS***Due process guarantees***

Under the bill, a student enrolled in a UW institution or technical college has a property interest in maintaining the student's status as a student that may be terminated against the student's will only for due cause, including failure to meet academic standards or attendance requirements, failure to pay tuition or other fees, or violating conduct rules. A student accused of a disciplinary or conduct violation that carries a potential penalty of expulsion or suspension of more than nine days, and a UW institution's or technical college's employee accused of a disciplinary or conduct violation, have the right to be represented, at the person's own expense, by a licensed attorney or non-attorney advocate who is permitted to fully participate during the disciplinary proceeding. The same right applies to a student organization, employee organization, or independent organization recognized by the

SENATE BILL 575

UW institution or technical college (organization) accused of a violation and to a complaining student if the disciplinary proceeding arises from the student's complaint. Prior to initiating a disciplinary proceeding or investigation, a UW institution or technical college must notify the student, employee, or organization that a complaint has been made and inform the student, employee, or organization of the student's, employee's, or organization's due process rights. A UW institution or technical college must ensure that all parties to a disciplinary proceeding, including if applicable an accusing student, have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. Before a disciplinary proceeding is scheduled, and at least two business days before a student, employee, or organization may be questioned about allegations of violations of the institution's or technical college's disciplinary or conduct rules, the institution or technical college must advise the student, employee, or organization in writing of these rights. A UW institution or technical college is not obligated to follow the state's rules of evidence in a disciplinary proceeding, but must make a good faith effort to include only relevant, probative evidence and must exclude evidence that is neither relevant nor probative. A UW institution or technical college must ensure that a disciplinary proceeding is carried out free from conflicts of interest by prohibiting overlap of administrative or adjudicative roles.

Penalties and Wisconsin grants

Under current law, the Wisconsin grant program, administered by the Higher Educational Aids Board, provides grants to resident students enrolled in eligible types of postsecondary schools, including UW institutions and technical colleges. The amount of funding available for these types of eligible postsecondary schools varies, and the UW System and technical colleges must annually submit to HEAB a proposed formula for awarding Wisconsin grants to students enrolled in UW institutions or technical colleges. HEAB must then approve, modify, or disapprove these proposed formulas for awarding grants to UW or technical college students in the next fiscal year.

Under this bill, a UW institution or technical college that violates any of the due process provisions described above more than once in a 10-year period is ineligible for allocation of Wisconsin grants for the longer of 1) a period of no less than one fiscal year; or 2) if the institution's or technical college's administrator causes the violation, until the administrator is permanently removed from his or her administrative role. HEAB's formula for awarding Wisconsin grants must take these loss of allocation penalties into consideration. The violation giving rise to this penalty may be found, by a preponderance of the evidence, by any of the following: 1) a state or federal court; 2) HEAB; or 3) a legislative standing committee having jurisdiction over matters relating to higher education.

SENATE BILL 575**SECTION 1**

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 36.11 (6) (c) of the statutes is amended to read:

36.11 (6) (c) By February 10 of each year, the board shall develop and submit to the higher educational aids board for its review under s. 39.285 (1) a proposed formula for the awarding of grants under s. 39.435, except for grants awarded under s. 39.435 (2) or (5), for the next fiscal year to students enrolled in the system. The proposed formula shall take into consideration any institution's loss of funding allocation under s. 36.42 (3) (a) and (b).

SECTION 2. 36.41 of the statutes is created to read:

36.41 Campus free speech and academic freedom. (1) DEFINITION. In this section, "employee" means a member of the faculty, academic staff, or university staff assigned to an institution. "Employee" also includes the institution's graduate assistants and employees in training.

(2) PRINCIPLES OF ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION. (a) The system and each institution shall adhere to the following principles of academic freedom and freedom of expression in order to achieve the system's mission under s. 36.01 (2):

1. Academic freedom includes the freedom to explore all avenues of scholarship, research, and creative expression, and to reach conclusions according to one's own scholarly discernment. Freedom of expression includes the right to discuss and present scholarly opinions and conclusions on all matters both in and

SENATE BILL 575**SECTION 2**

outside the classroom. These freedoms include the right to speak and write as a member of an institution's community or as a private citizen without institutional discipline or restraint on scholarly matters or on matters of public concern. The system and each institution shall remain committed to these principles and provide all members of an institution's community the broadest possible latitude to explore ideas and to speak, write, listen, challenge, and learn.

2. Although different ideas in an institution's community often and quite naturally conflict, it is not the proper role of an institution to attempt to shield individuals from ideas and opinions the institution or others find unwelcome, disagreeable, or even deeply offensive. Despite the great value of civility, concerns about civility and mutual respect may never be used as justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members within an institution's community.

3. The freedom to debate and discuss the merits of competing ideas does not mean that members of an institution's community may say whatever they wish, wherever they wish. Consistent with long-standing practice informed by law, the system and each institution may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or discriminatory harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of an institution. In addition, subject to sub. (3) (a) 2., the system and each institution may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt ordinary activities. However, these exceptions to

SENATE BILL 575**SECTION 2**

the general principle of freedom of expression shall be construed narrowly and may not be applied in a manner that is inconsistent with the system's and each institution's commitment to a completely free and open discussion of ideas.

(b) The principles stated in par. (a) carry responsibilities, as follows:

1. Academic freedom carries the responsibility for the faithful performance of professional duties and obligations. All members of an institution's community share in the responsibility for maintaining civility and a climate of mutual respect. Although members of an institution's community are free to criticize and contest the views expressed on campus, they may not obstruct or otherwise interfere with the freedom of others, including speakers who are invited to campus, to express views they reject or even loathe.

2. Freedom of expression carries the obligation to make clear that when speaking on matters of public interest or concern, one is speaking on behalf of oneself, not the institution.

3. An institution has a solemn responsibility not only to promote lively and fearless exploration, deliberation, and debate of ideas, but also to protect those freedoms when others attempt to restrict them. Exploration, deliberation, and debate may not be suppressed because the ideas put forth are thought by some or even by most members of an institution's community, or those outside the community, to be offensive, unwise, immoral, or wrongheaded. It is for the members of an institution's community, not for the institution itself, to make those judgments for themselves, and to act on those judgments not by seeking to suppress exploration of ideas or expression of speech, but by openly and vigorously contesting

SENATE BILL 575**SECTION 2**

the ideas that they oppose. Fostering the ability of members of an institution's community to engage in such debate and deliberation in an effective and responsible manner is an essential part of an institution's educational mission.

(3) FIRST AMENDMENT PROTECTIONS. (a) Except as specified in this section, an institution may not do any of the following:

1. Restrict speech protected under the First Amendment of the U.S. Constitution, including noncommercial expressive activities protected under the provisions of this section, which include all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, circulating petitions, and the recording and lawful publication, including Internet publication, of video and audio lawfully recorded in public outdoor areas of public institutions of higher education, if the speaker's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

2. Maintain and enforce time, place, and manner restrictions on expressive activities on the open outdoor areas of its campus that are generally accessible to the public and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, unless those restrictions meet all of the following requirements:

- a. The restrictions are reasonable, in furtherance of a significant institutional interest, and employ clear, published, content-neutral, and viewpoint-neutral criteria.

- b. The restrictions provide for ample alternative means for communication of

SENATE BILL 575**SECTION 2**

the information and allow for members of the institution's community to spontaneously and contemporaneously distribute literature and assemble.

3. Designate any area of a campus a "free speech zone" or otherwise create policies restricting noncommercial expressive activities to a particular area of a campus.

4. Require a permit from any individual or group as a condition of being allowed to engage in expressive activities protected under this section, unless the individual or group is seeking exclusive control of a location for its expressive activity at a reserved time. Any such permitting process may not be overly burdensome, and applications for permits shall be evaluated solely using published content and viewpoint-neutral criteria.

5. Charge security fees to a student or a student group, as part of an application for those expressive activities that require a permit, based on the content of the expression, the content of the expression of an invited guest, or the anticipated reaction to the student's, student group's, or invited guest's expression. Whether the security fee is required and its amount may be determined only on the basis of content and viewpoint-neutral criteria. Content and viewpoint-neutral criteria include the time of the event, the location of the event, the anticipated size of the invited audience, and whether alcohol will be served. Any institution charging security fees pursuant to this subdivision shall publish the criteria it uses for assessing those charges and shall have a published process for waving the fees for those who cannot afford to pay them.

6. Sanction individuals or groups for discriminatory harassment unless the

SENATE BILL 575**SECTION 2**

speech targets its victim on the basis of the victim's membership in a class protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits. This subdivision does not preclude an institution from providing additional resources to a student affected by speech that cannot be sanctioned under this subdivision or from taking nonpunitive actions.

(b) All indoor areas that have been designated as public forums and outdoor public areas generally accessible to the public and operated by an institution or under the institution's jurisdiction, except classrooms while they are in use for instructional purposes, shall be governed by rules applicable to traditional public forums.

(c) 1. Nothing in this section enables individuals to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

2. For purposes of subd. 1., and subject to subd. 3., "materially and substantially disrupts" means when a person, with the intent or knowledge of doing so, significantly hinders another person's or group's expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering, or procession by doing any of the following:

- a. Engaging in fighting, violence, or seriously disruptive behavior.
- b. Physically blocking or significantly hindering any person from attending, listening to, viewing, or otherwise participating in an expressive activity.

SENATE BILL 575**SECTION 2**

3. For purposes of subd. 1., the phrase “materially and substantially disrupts” does not include conduct that is protected under the First Amendment of the U.S. Constitution or article I, section 3, of the Wisconsin Constitution. This protected conduct includes lawful protests and counterprotests in the outdoor areas of campus generally accessible to members of the public and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, except during times when those areas have been reserved in advance for other events, or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(d) Nothing in this section limits the right of student expression at campus locations that are not specified in this section.

(e) An institution shall do all of the following:

1. Conduct a biennial survey of students and employees on First Amendment rights, academic freedom, perceived political, ideological, or other bias at the institution, and whether campus culture promotes self-censorship. The survey shall be conducted using statistically sound methodology and in a manner that protects the confidentiality of the survey’s respondents.

2. Biennially submit to the legislature under s. 13.172 (2) a report detailing the results of the survey under subd. 1.

3. Annually provide all students and employees with instruction in academic freedom, due process, and First Amendment protections.

(4) ACADEMIC FREEDOM. (a) No board policy, institution policy, or employee

SENATE BILL 575**SECTION 2**

may limit the expressive rights and academic freedom of an instructor of an institution to do any of the following:

1. Conduct research, publish, lecture, or teach in the academic setting.

2. Require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring, or arguing for or against, any argument or assertion.

3. Speak publicly as a private citizen on matters of public concern.

(b) Nothing in this subsection shall be interpreted to prohibit an institution from requiring an instructor to perform the instructor's academic duties or from setting performance standards consistent with this subsection or as required by other law of this state.

(5) NOTICE; INSTITUTIONAL AID. (a) An institution that violates this section, for 4 years following the date of the finding of the violation under par. (b), shall include a disclaimer on all notices, both printed or electronic, to individuals regarding admission to the institution, in a type size no smaller than the majority of the rest of the notice, in substantially the following form: "NOTICE: We are required by the State of Wisconsin to inform you that within the last 4 years ... [insert name of institution] has violated the free speech or academic freedom provisions in the Wisconsin statutes."

(b) The penalty under par. (a) applies if a state or federal court in this state finds, on the basis of a preponderance of the evidence, that the institution violated this section.

(6) CAUSE OF ACTION. (a) Any person identified in par. (b) may bring an

SENATE BILL 575**SECTION 2**

action in circuit court against the board for violation of this section by an institution and may seek any of the following:

1. An injunction against violation of this section.

2. Recovery from the board of damages, court costs, and attorney fees for persons aggrieved by the violation.

(b) Any of the following persons may bring an action under par. (a):

1. The attorney general.

2. A district attorney.

3. Any person whose expressive rights were violated through the violation of this section.

(c) Subject to par. (d), in an action brought under par. (a), if the court finds a violation, the court shall award to the plaintiffs all of the following:

1. Total damages for all prevailing persons aggrieved by the violation of not less than \$500 for the initial violation plus \$50 for each day the violation remains ongoing, which shall accrue starting on the day after the complaint is served on the board.

2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

(d) In an action brought under par. (a), the total damages, excluding court costs and attorney fees, that may be awarded to plaintiffs in a case or cases stemming from a single controversy may not exceed an aggregate amount of \$100,000. In violations harming multiple plaintiffs, the court shall divide the damages equitably among them until the maximum award is exhausted, if applicable.

SENATE BILL 575**SECTION 2**

(e) If a court awards to plaintiffs damages, court costs, or attorney fees in an action brought under this subsection, the board shall pay the total amount of the award from moneys allocated under s. 36.09 (1) (h) to the violating institution for the institution's administrative expenses.

SECTION 3. 36.42 of the statutes is created to read:

36.42 Due process guarantees in disciplinary proceedings. (1)

DEFINITIONS. In this section:

(a) "Disciplinary proceeding" means an investigatory interview or hearing, or any other procedure adopted and used by an institution, relating to an alleged violation that may result in disciplinary action against a student, employee, or organization.

(b) "Employee" means a member of the faculty, academic staff, or university staff assigned to an institution. "Employee" also includes the institution's graduate assistants and employees in training.

(c) "Fully participate" includes having the opportunity to make opening and closing statements, to examine and cross-examine witnesses, and to provide the accuser or accused with support, guidance, and advice.

(d) "Organization" means a student organization, employee organization, or independent organization that is officially recognized by an institution.

(2) DUE PROCESS GUARANTEES. (a) A student who has enrolled in an institution has a property interest in maintaining the student's status as a student that may be terminated against the student's will only for due cause, including failure to meet academic standards, failure to pay academic fees, tuition, or other

SENATE BILL 575**SECTION 3**

costs required for continued enrollment, failure to meet the institution's attendance requirements, or a violation of the institution's conduct rules. A student who is accused of a violation of disciplinary or conduct rules that carries a potential penalty of suspension of more than 9 days or expulsion shall have the right to be represented, at the student's expense, by a licensed attorney or, if the student prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(b) In addition to any substantive or procedural rights set forth in an employee's employment contract, an employee who is accused of a violation of disciplinary or conduct rules shall have the right to be represented, at the employee's expense, by a licensed attorney or, if the employee prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(c) An organization that is accused of a violation of disciplinary or conduct rules shall have the right to be represented, at the organization's expense, by a licensed attorney or, if the organization prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(d) If a disciplinary proceeding arises from a complaint by a student against a student, employee, or organization, the complaining student shall also have the right to be represented, at that student's expense, by a licensed attorney or, if the complaining student prefers, a non-attorney advocate.

(e) Prior to initiating a disciplinary proceeding or investigation, an institution shall notify the student, employee, or organization that a complaint has been made

SENATE BILL 575**SECTION 3**

and inform the student, employee, or organization of his, her, or its due process rights.

(f) In a disciplinary proceeding, an institution is not obligated to follow the state's rules of evidence but shall make a good faith effort to include only relevant, probative evidence and shall exclude evidence that is neither relevant nor probative.

(g) Before a disciplinary proceeding is scheduled, and at least 2 business days before a student, employee, or organization may be questioned by an institution or agent of the institution about allegations of violations of the institution's disciplinary or conduct rules, the institution shall advise the student, employee, or organization in writing of the student's, employee's, or organization's rights under this subsection.

(h) The right of a student, employee, or organization to be represented by an attorney or a non-attorney advocate applies until the conclusion of any appellate process.

(i) An institution shall ensure that all parties to a disciplinary proceeding, including the accused student, the accused employee, the accused organization, and, if applicable, the accusing student, have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. This evidence may include complainant statements, 3rd-party witness statements, electronically stored information, written communications, social media posts, and demonstrative

SENATE BILL 575**SECTION 3**

evidence but may not include any materials that are privileged under applicable federal or state law.

(j) An institution shall ensure that a disciplinary proceeding is carried out free from conflicts of interest by prohibiting overlap of administrative or adjudicative roles. An individual may not serve in more than one of the following roles:

1. Counselor or advocate of the accuser or victim.
2. Investigator.
3. Hearing panel member.
4. Institutional prosecutor.
5. Adjudicator.
6. Appellate adjudicator.

(k) This subsection does not affect the obligation of an institution to provide equivalent rights to a student who is the accuser or victim in the disciplinary proceeding, including equivalent opportunities to have others present and fully participate during the disciplinary proceeding, to not limit the choice of attorney or non-attorney advocate in any meeting or in the disciplinary proceeding, and to provide simultaneous notification of the institution's procedures for the accused and the accuser or victim to appeal the result of the disciplinary proceeding.

(L) Nothing in this subsection shall prevent the temporary suspension of a student, employee, or organization pending an investigation.

(3) PENALTIES. (a) An institution that violates this section more than once in

SENATE BILL 575**SECTION 3**

a 10-year period is ineligible for allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5), for a period of no less than one fiscal year.

(b) In addition to the period of ineligibility under par. (a), if an institution's administrator causes the violation of this section, the institution is not eligible for allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5), until the administrator is permanently removed from his or her administrative role.

(c) The penalties under this subsection apply if any of the following find, on the basis of a preponderance of the evidence, that the institution violated this section:

1. A state or federal court in this state.
2. The higher educational aids board.
3. Any standing committee of the legislature having jurisdiction over matters relating to higher education.

SECTION 4. 38.04 (7m) of the statutes is amended to read:

38.04 (**7m**) FINANCIAL AIDS. By February 10 of each year, the board shall develop and submit to the higher educational aids board for its review under s. 39.285 (1) a proposed formula for the awarding of grants under s. 39.435, except for grants awarded under s. 39.435 (2) or (5), for the next fiscal year to students enrolled in the technical colleges. The proposed formula shall take into consideration any technical college's loss of funding allocation under s. 38.35 (3) (a) and (b).

SECTION 5. 38.34 of the statutes is created to read:

SENATE BILL 575**SECTION 5**

38.34 Campus free speech and academic freedom. (1) DEFINITIONS. In this section:

(a) “Employee” means a staff member, faculty member, or administrator employed by a district board.

(b) “Student” means an individual enrolled in a district school.

(2) FIRST AMENDMENT PROTECTIONS. (a) Except as specified in this section, a district board may not do any of the following:

1. Restrict speech protected under the First Amendment of the U.S. Constitution, including noncommercial expressive activities protected under the provisions of this section, which include all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, circulation petitions, and the recording and lawful publication, including Internet publication, of video and audio lawfully recorded in public outdoor areas of public institutions of higher education, if the speaker’s conduct is not unlawful and does not materially and substantially disrupt the functioning of the district school.

2. Maintain and enforce time, place, and manner restrictions on expressive activities on the open outdoor areas of district campuses that are generally accessible to the public and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, unless those restrictions meet all of the following requirements:

a. The restrictions are reasonable, in furtherance of a significant interest of the district board, and employ clear, published, content-neutral, and viewpoint-neutral criteria.

SENATE BILL 575**SECTION 5**

b. The restrictions provide for ample alternative means for communication of the information and allow for members of the district campus's community to spontaneously and contemporaneously distribute literature and assemble.

3. Designate any area of a district campus a "free speech zone" or otherwise create policies restricting noncommercial expressive activities to a particular area of a district campus.

4. Require a permit from any individual or group as a condition of being allowed to engage in expressive activities protected under this section, unless the individual or group is seeking exclusive control of a location for its expressive activity at a reserved time. Any such permitting process may not be overly burdensome, and applications for permits shall be evaluated solely using published content and viewpoint-neutral criteria.

5. Charge security fees to a student or a student group, as part of an application for those expressive activities that require a permit, based on the content of the expression, the content of the expression of an invited guest, or the anticipated reaction to the student's, student group's, or invited guest's expression. Whether the security fee is required and its amount may be determined only on the basis of content and viewpoint-neutral criteria. Content and viewpoint-neutral criteria include the time of the event, the location of the event, the anticipated size of the invited audience, and whether alcohol will be served. Any district board charging security fees pursuant to this subdivision shall publish the criteria it uses for assessing those charges and shall have a published process for waving the fees for those who cannot afford to pay them.

SENATE BILL 575**SECTION 5**

6. Sanction individuals or groups for discriminatory harassment unless the speech targets its victim on the basis of the victim's membership in a class protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that it effectively bars a student from receiving equal access to educational opportunities or benefits. This subdivision does not preclude a district board from providing additional resources to a student affected by speech that cannot be sanctioned under this subdivision or from taking nonpunitive actions.

(b) All indoor areas that have been designated as public forums and outdoor public areas generally accessible to the public and owned or operated by a district board, except classrooms while they are in use for instructional purposes, shall be governed by rules applicable to traditional public forums.

(c) 1. Nothing in this section enables individuals to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

2. For purposes of subd. 1., and subject to subd. 3., "materially and substantially disrupts" means when a person, with the intent or knowledge of doing so, significantly hinders another person's or group's expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering, or procession by doing any of the following:

- a. Engaging in fighting, violence, or seriously disruptive behavior.
- b. Physically blocking or significantly hindering any person from attending, listening to, viewing, or otherwise participating in an expressive activity.

SENATE BILL 575**SECTION 5**

3. For purposes of subd. 1., the phrase “materially and substantially disrupts” does not include conduct that is protected under the First Amendment of the U.S. Constitution or article I, section 3, of the Wisconsin Constitution. This protected conduct includes lawful protests and counterprotests in the outdoor areas of campus generally accessible to members of the public and indoor areas that have been designated as public forums, except classrooms while they are in use for instructional purposes, except during times when those areas have been reserved in advance for other events, or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(d) Nothing in this section limits the right of student expression at campus locations that are not specified in this section.

(e) A district board shall do all of the following:

1. Conduct a biennial survey of students and employees on First Amendment rights, academic freedom, perceived political, ideological, or other bias at the district schools, and whether campus culture promotes self-censorship. The survey shall be conducted using statistically sound methodology and in a manner that protects the confidentiality of the survey’s respondents.

2. Biennially submit to the legislature under s. 13.172 (2) a report detailing the results of the survey under subd. 1.

3. Annually provide all students and employees with instruction in academic freedom, due process, and First Amendment protections.

(3) ACADEMIC FREEDOM. (a) No district board policy or employee may limit

SENATE BILL 575**SECTION 5**

the expressive rights and academic freedom of an instructor of a district school to do any of the following:

1. Conduct research, publish, lecture, or teach in the academic setting.

2. Require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring, or arguing for or against, any argument or assertion.

3. Speak publicly as a private citizen on matters of public concern.

(b) Nothing in this subsection shall be interpreted to prohibit a district board from requiring an instructor to perform the instructor's academic duties or from setting performance standards consistent with this subsection or as required by other law of this state.

(4) NOTICE; INSTITUTIONAL AID. (a) A district board that violates this section, for 4 years following the date of the finding of the violation under par. (b), shall include a disclaimer on all notices, both printed or electronic, to individuals regarding admission to a technical college of the district, in a type size no smaller than the majority of the rest of the notice, in substantially the following form: "NOTICE: We are required by the State of Wisconsin to inform you that within the last 4 years ... [insert name of technical college] has violated the free speech or academic freedom provisions in the Wisconsin statutes."

(b) The penalty under par. (a) applies if a state or federal court in this state finds, on the basis of a preponderance of the evidence, that the district board violated this section.

(5) CAUSE OF ACTION. (a) Any person identified in par. (b) may bring an

SENATE BILL 575**SECTION 5**

action in circuit court against a district board for violation of this section and may seek any of the following:

1. An injunction against violation of this section.
2. Recovery from the district board of damages, courts costs, and attorney fees

for persons aggrieved by the violation.

(b) Any of the following persons may bring an action under par. (a):

1. The attorney general.
2. A district attorney.
3. Any person whose expressive rights were violated through the violation of this section.

(c) Subject to par. (d), in an action brought under par. (a), if the court finds a violation, the court shall award to the plaintiffs all of the following:

1. Total damages for all prevailing persons aggrieved by the violation of not less than \$500 for the initial violation plus \$50 for each day the violation remains ongoing, which shall accrue starting on the day after the complaint is served on the district board.

2. Notwithstanding s. 814.04 (1), court costs and reasonable attorney fees.

(d) In an action brought under par. (a), the total damages, excluding court costs and attorney fees, that may be awarded to plaintiffs in a case or cases stemming from a single controversy may not exceed an aggregate amount of \$100,000. In violations harming multiple plaintiffs, the court shall divide the damages equitably among them until the maximum award is exhausted, if applicable.

SENATE BILL 575**SECTION 5**

(e) If a court awards to plaintiffs damages, court costs, or attorney fees in an action brought under this subsection, the district board shall pay the total amount of the award from moneys that the district board has allocated for its administrative expenses.

(f) Section 893.80 does not apply to an action brought against a district board under this section.

SECTION 6. 38.35 of the statutes is created to read:

38.35 Due process guarantees in disciplinary proceedings. (1)

DEFINITIONS. In this section:

(a) “Disciplinary proceeding” means an investigatory interview or hearing, or any other procedure adopted and used by a district board, relating to an alleged violation that may result in disciplinary action against a student, employee, or organization.

(b) “Employee” means a staff member, faculty member, or administrator employed by a district board.

(c) “Fully participate” includes having the opportunity to make opening and closing statements, to examine and cross-examine witnesses, and to provide the accuser or accused with support, guidance, and advice.

(d) “Organization” means a student organization, employee organization, or independent organization that is officially recognized by a district board.

(2) DUE PROCESS GUARANTEES. (a) A student who has enrolled in a district school has a property interest in maintaining the student’s status as a student that may be terminated against the student’s will only for due cause, including failure to

SENATE BILL 575**SECTION 6**

meet academic standards, failure to pay fees or other costs required for continued enrollment, failure to meet the district board's attendance requirements, or a violation of the district board's conduct rules. A student who is accused of a violation of disciplinary or conduct rules that carries a potential penalty of suspension of more than 9 days or expulsion shall have the right to be represented, at the student's expense, by a licensed attorney or, if the student prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(b) In addition to any substantive or procedural rights set forth in an employee's employment contract, an employee who is accused of a violation of disciplinary or conduct rules shall have the right to be represented, at the employee's expense, by a licensed attorney or, if the employee prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(c) An organization that is accused of a violation of disciplinary or conduct rules shall have the right to be represented, at the organization's expense, by a licensed attorney or, if the organization prefers, a non-attorney advocate, who shall be permitted to fully participate during the disciplinary proceeding.

(d) If a disciplinary proceeding arises from a complaint by a student against a student, employee, or organization, the complaining student shall also have the right to be represented, at that student's expense, by a licensed attorney or, if the complaining student prefers, a non-attorney advocate.

(e) Prior to initiating a disciplinary proceeding or investigation, a district

SENATE BILL 575**SECTION 6**

board shall notify the student, employee, or organization that a complaint has been made and inform the student, employee, or organization of his, her, or its due process rights.

(f) In a disciplinary proceeding, a district board is not obligated to follow the state's rules of evidence but shall make a good faith effort to include only relevant, probative evidence and shall exclude evidence that is neither relevant nor probative.

(g) Before a disciplinary proceeding is scheduled, and at least 2 business days before a student, employee, or organization may be questioned by a district board or agent of the district board about allegations of violations of the district board's disciplinary or conduct rules, the district board shall advise the student, employee, or organization in writing of the student's, employee's, or organization's rights under this subsection.

(h) The right of a student, employee, or organization to be represented by an attorney or a non-attorney advocate applies until the conclusion of any appellate process.

(i) A district board shall ensure that all parties to a disciplinary proceeding, including the accused student, the accused employee, the accused organization, and, if applicable, the accusing student, have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. This evidence may include complainant statements, 3rd-party witness statements, electronically stored information, written communications, social media posts, and demonstrative

SENATE BILL 575**SECTION 6**

evidence but may not include any materials that are privileged under applicable federal or state law.

(j) A district board shall ensure that a disciplinary proceeding is carried out free from conflicts of interest by prohibiting overlap of administrative or adjudicative roles. An individual may not serve in more than one of the following roles:

1. Counselor or advocate of the accuser or victim.
2. Investigator.
3. Hearing panel member.
4. District board prosecutor.
5. Adjudicator.
6. Appellate adjudicator.

(k) This subsection does not affect the obligation of a district board to provide equivalent rights to a student who is the accuser or victim in the disciplinary proceeding, including equivalent opportunities to have others present and fully participate during the disciplinary proceeding, to not limit the choice of attorney or non-attorney advocate in any meeting or in the disciplinary proceeding, and to provide simultaneous notification of the district board's procedures for the accused and the accuser or victim to appeal the result of the disciplinary proceeding.

(L) Nothing in this subsection shall prevent the temporary suspension of a student, employee, or organization pending an investigation.

(3) PENALTIES. (a) A district board that violates this section more than once

SENATE BILL 575**SECTION 6**

in a 10-year period is ineligible for allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5), for a period of no less than one fiscal year.

(b) In addition to the period of ineligibility under par. (a), if a district board administrator causes the violation of this section, the district board is not eligible for allocation of grants under s. 39.435, except grants awarded under s. 39.435 (2) or (5), until the administrator is permanently removed from his or her administrative role.

(c) The penalties under this subsection apply if any of the following find, on the basis of a preponderance of the evidence, that the district board violated this section:

1. A state or federal court in this state.
2. The higher educational aids board.
3. Any standing committee of the legislature having jurisdiction over matters relating to higher education.

SECTION 7. 39.285 (1) (c) of the statutes is created to read:

39.285 (1) (c) The board shall ensure that any formula approved under par. (a) takes into consideration any University of Wisconsin institution's loss of funding allocation under s. 36.42 (3) (a) and (b) or technical college district board's loss of funding allocation under s. 38.35 (3) (a) and (b).

(END)