

116TH CONGRESS
2D SESSION

S. 4483

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2020

Mr. COTTON (for himself, Mr. McCONNELL, Mrs. LOEFFLER, and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Campus Free Speech
5 Restoration Act”.

1 **SEC. 2. PROTECTION OF STUDENT SPEECH AND ASSOCIA-**
2 **TION RIGHTS.**

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

5 (1) by redesignating paragraph (2) as para-
6 graph (4); and

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

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

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

17 “(B) no public institution of higher education
18 directly or indirectly receiving financial assistance
19 under this Act should limit religious expression, free
20 expression, or any other rights provided under the
21 First Amendment to the Constitution of the United
22 States.

23 “(3) It is the sense of Congress that—

24 “(A) free speech zones and restrictive speech
25 codes are inherently at odds with the freedom of

1 speech guaranteed by the First Amendment to the
 2 Constitution of the United States;

3 “(B) bias reporting systems are susceptible to
 4 abuses that may put them at odds with the freedom
 5 of speech guaranteed by the First Amendment to the
 6 Constitution of the United States; and

7 “(C) no public institution of higher education
 8 directly or indirectly receiving financial assistance
 9 under this Act should restrict the speech of such in-
 10 stitution’s students through improperly restrictive
 11 zones, codes, or bias reporting systems.”.

12 **SEC. 3. CAMPUS SPEECH POLICIES AT INSTITUTIONS OF**
 13 **HIGHER EDUCATION.**

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

16 (1) in section 487(a), by adding at the end the
 17 following:

18 “(30) In the case of an institution that is a
 19 public institution, the institution will comply with
 20 the expressive activity protections described in sec-
 21 tion 493E.”; and

22 (2) in part G, by adding at the end the fol-
 23 lowing:

1 **“SEC. 493E. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**
 2 **SITIES.**

3 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

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

6 “(A) peacefully assembling, protesting,
 7 speaking, or listening;

8 “(B) distributing literature;

9 “(C) carrying a sign;

10 “(D) circulating a petition; or

11 “(E) other expressive rights guaranteed
 12 under the First Amendment to the Constitution
 13 of the United States.

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

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

19 “(1) IN GENERAL.—Each public institution of
 20 higher education participating in a program under
 21 this title may not prohibit, subject to paragraph (2),
 22 a person from freely engaging in noncommercial ex-
 23 pressive activity in a generally accessible outdoor
 24 area on the institution’s campus if the person’s con-
 25 duct is lawful.

1 “(2) RESTRICTIONS.—An institution of higher
 2 education described in paragraph (1) may not main-
 3 tain or enforce time, place, or manner restrictions on
 4 an expressive activity in a generally accessible out-
 5 door area of the institution’s campus unless the re-
 6 striction—

7 “(A) is necessary to achieve a compelling
 8 governmental interest;

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

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

13 “(D) leaves open ample alternative chan-
 14 nels for communication; and

15 “(E) provides for spontaneous assembly
 16 and distribution of literature.

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

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

1 “(c) CAUSES OF ACTION.—

2 “(1) AUTHORIZATION.—The following persons
3 may bring an action in a Federal court of competent
4 jurisdiction to enjoin a violation of subsection (b) or
5 to recover compensatory damages, reasonable court
6 costs, or reasonable attorney fees:

7 “(A) The Attorney General.

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

11 “(2) ACTIONS.—Notwithstanding any other
12 provision of law, in an action brought under this sec-
13 tion, the Federal court shall decide de novo all rel-
14 evant questions of fact and law, including the inter-
15 pretation of constitutional, statutory, and regulatory
16 provisions, unless the parties stipulate otherwise. In
17 an action brought under this subsection, if the court
18 finds a violation of subsection (b), the court—

19 “(A) shall—

20 “(i) enjoin the violation; and

21 “(ii) if a person whose expressive ac-
22 tivity rights were violated brought the ac-
23 tion, award the person—

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

1 “(II) if the person notifies the in-
 2 stitution of the violation, \$50 for each
 3 day the violation continues after the
 4 notification if the institution did not
 5 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) STATUTE OF LIMITATIONS.—

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

16 “(2) CONTINUING VIOLATION.—Each day that
 17 a violation of subsection (b) continues after an ini-
 18 tial violation of subsection (b), and each day that an
 19 institution’s policy in violation of subsection (b) re-
 20 mains in effect, shall constitute a continuing viola-
 21 tion of subsection (b).

22 “(3) EXTENSION.—For a continuing violation
 23 described in paragraph (2), the limitation described
 24 in paragraph (1) shall extend to 1 year after the
 25 date on which the most recent violation occurs.

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

2 “(1) NO ELIGIBILITY FOR FUNDS.—

3 “(A) IN GENERAL.—No public institution
4 of higher education shall be eligible to receive
5 funds under this Act, including participation in
6 any program under this title, if the Secretary
7 determines that the institution—

8 “(i) maintains a policy that infringes
9 upon the expressive rights of students
10 under the First Amendment to the Con-
11 stitution of the United States; or

12 “(ii) maintains or enforces time,
13 place, or manner restrictions on an expres-
14 sive activity in a generally accessible out-
15 door area of the institution’s campus that
16 do not comply with subparagraphs (A)
17 through (E) of subsection (b)(2).

18 “(B) 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 from
 5 students or student organizations at a given public
 6 institution of higher education, or from any other
 7 person or organization, regarding policies at the in-
 8 stitution—

9 “(A) that infringe upon the expressive
 10 rights of students under the First Amendment
 11 to the Constitution of the United States; or

12 “(B) that maintain or enforce time, place,
 13 or manner restrictions on an expressive activity
 14 in a generally accessible outdoor area of the in-
 15 stitution’s campus that do not comply with sub-
 16 paragraphs (A) through (E) of subsection
 17 (b)(2).

18 “(3) COMPLAINT.—A complaint submitted
 19 under subparagraph (2)—

20 “(A) shall include the provision of the in-
 21 stitution’s policy the complainant believes either
 22 infringes upon the expressive rights of students
 23 under the First Amendment to the Constitution
 24 of the United States or maintains or enforces
 25 time, place, or manner restrictions on an ex-

1 pressive activity in a generally accessible out-
 2 door area of the institution’s campus that does
 3 not comply with subparagraphs (A) through (E)
 4 of subsection (b)(2), along with any evidence re-
 5 garding the operation and enforcement of such
 6 policy the complainant deems relevant; and

7 “(B) may include an argument as to why
 8 the policy in question either infringes upon the
 9 expressive rights of students under the First
 10 Amendment to the Constitution of the United
 11 States or maintains or enforces time, place, or
 12 manner restrictions on an expressive activity in
 13 a generally accessible outdoor area of the insti-
 14 tution’s campus that does not comply with sub-
 15 paragraphs (A) through (E) of subsection
 16 (b)(2).

17 “(4) SYSTEM OF REVIEW.—

18 “(A) FIRST STAGE REVIEW.—

19 “(i) REQUEST FOR RESPONSE.—Not
 20 later than 7 days after the date of receipt
 21 of a complaint under paragraph (2), the
 22 Secretary shall review the complaint and
 23 request a response to the complaint from
 24 the institution.

1 “(ii) INSTITUTION RESPONSE.—Not
 2 later than 30 days after the date the Sec-
 3 retary requests a response under clause (i),
 4 the institution shall—

5 “(I) certify to the Secretary that
 6 the institution has entirely withdrawn
 7 the policy that occasioned the com-
 8 plaint;

9 “(II) submit a revised policy for
 10 review by the Secretary; or

11 “(III) submit a defense of the
 12 policy that occasioned the complaint.

13 “(iii) AVAILABILITY TO COMPLAIN-
 14 ANT.—

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

23 “(II) RESPONSE BY COMPLAIN-
 24 ANT.—Not later than 60 days after
 25 the date of receipt of a revised policy

1 or defense of the original policy under
 2 subclause (I), the complainant may
 3 submit to the Secretary a response to
 4 the revised policy or defense of the
 5 original policy.

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

12 “(iv) DETERMINATIONS.—If the insti-
 13 tution declines to entirely withdraw the
 14 policy that occasioned the complaint and
 15 either submits a revised policy for review
 16 or submits a defense of the policy that oc-
 17 casioned the complaint, the Secretary shall,
 18 not later than 60 days after the date of the
 19 deadline for a response by the complaint as
 20 described in clause (iii)(II), make one of
 21 the following determinations:

22 “(I) Determine that the com-
 23 plaint in question has insufficient
 24 merit to proceed to Second Stage Re-
 25 view described in subparagraph (B).

1 “(II) Determine that the com-
2 plaint in question has sufficient merit
3 to proceed to Second Stage Review
4 described in subparagraph (B).

5 “(v) NOTIFICATION.—Not later than
6 7 days after the date the Secretary makes
7 a determination under clause (iv), the Sec-
8 retary shall notify the institution and the
9 complainant of such determination.

10 “(vi) END.—The determination under
11 clause (iv) shall constitute the end of First
12 Stage Review.

13 “(B) SECOND STAGE REVIEW.—

14 “(i) IN GENERAL.—In a Second Stage
15 Review, the Secretary shall notify the insti-
16 tution and the complainant of the com-
17 mencement of the Second Stage Review,
18 and shall give the institution the option of
19 entirely withdrawing the policy that occa-
20 sioned the complaint or submitting a re-
21 vised policy for review within 30 days of
22 the commencement of the Second Stage
23 Review. In such notification submitted to
24 the institution and complainant, the Sec-
25 retary shall indicate the relevant sections

1 of the institution's policy in question and
2 explain why these sections may be out of
3 compliance.

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

18 “(iii) INVESTIGATION.—During Sec-
19 ond Stage Review, the Secretary may con-
20 duct an investigation in which further in-
21 formation may be sought or requested
22 from the complainant, the institution, or
23 any other source the Secretary determines
24 pertinent.

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

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

20 “(I) the Secretary shall notify the
21 complainant and the institution of
22 such determination not more than 7
23 days after the date of the determina-
24 tion; and

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

9 “(C) DETERMINATION THAT INSTITUTION
10 IS OUT OF COMPLIANCE.—

11 “(i) IN GENERAL.—If, upon comple-
12 tion of the Second Stage Review, the Sec-
13 retary determines that the policy that occa-
14 sioned the complaint, or the revised policy
15 submitted for review during the First
16 Stage Review or Second Stage Review, vio-
17 lates the First Amendment to the Con-
18 stitution of the United States or the re-
19 strictions on the regulation of speech set
20 forth in this section, the Secretary shall
21 notify the complainant and the institution
22 not more than 7 days after the date of
23 completion of Second Stage Review that
24 the institution is out of compliance with
25 the requirements for receiving funds under

1 this Act, including participation in any
2 program under this title, but will be grant-
3 ed a grace period of 120 days to return to
4 compliance before being formally stripped
5 of eligibility.

6 “(ii) POSTING; EXPLANATION; FINAL
7 REVIEW.—As part of the notification under
8 clause (i), the Secretary shall—

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

15 “(II) explain and justify the de-
16 termination of the Secretary in a writ-
17 ten decision citing relevant legal
18 precedent, copies of which shall be
19 sent to the complainant, the institu-
20 tion, and made available for public in-
21 spection, including for online reading
22 by the public; and

23 “(III) inform the institution that
24 Final Review has begun and that the
25 institution must either certify to the

Secretary that it has entirely withdrawn the policy that occasioned the complaint, or submit a revised policy for review to the Secretary not later than 60 days after the date of receipt of notice of the conclusion of Second Stage Review.

“(D) FINAL REVIEW.—

“(i) IN GENERAL.—If an institution submits a revised policy for review as described in subparagraph (C)(ii)(III), the Secretary shall review such revised policy and determine not later than 120 days after the date of commencement of Final Review whether the revised policy is consistent with the expressive rights of students under the First Amendment to the Constitution of the United States and with the restrictions on the regulation of speech by time, place, and manner set forth in this Act.

“(ii) DETERMINATION OF COMPLIANCE.—If the Secretary determines, as described in clause (i), that the revised policy is consistent with the expressive rights of

1 students under the First Amendment to
2 the Constitution of the United States and
3 with the restrictions on the regulation of
4 speech by time, place, and manner set
5 forth in this Act, the Secretary shall notify
6 the complainant and the institution of such
7 determination not more than 7 days after
8 the date the determination is made, there-
9 by ending the final Stage Review.

10 “(iii) DETERMINATION OF VIOLA-
11 TION.—If the Secretary determines, as de-
12 scribed in clause (i), that the revised policy
13 violates the expressive rights of students
14 under the First Amendment to the Con-
15 stitution of the United States or the re-
16 strictions on the regulation of speech by
17 time, place, and manner set forth in this
18 Act, the Secretary shall—

19 “(I) notify the complainant and
20 the institution of such determination
21 not more than 7 days after the date
22 the determination is made, thereby
23 ending the final Stage Review; and

24 “(II) explain and justify the de-
25 termination in a written decision cit-

ing relevant legal precedent, copies of which shall be sent to the complainant, the institution, and made available for public inspection, including for online reading by the public.

“(E) LOSS OF ELIGIBILITY.—

“(i) IN GENERAL.—If the Secretary determines, during the Final Stage Review, that the institution’s policy in question violates the expressive rights of students under the First Amendment to the Constitution of the United States or the restrictions on the regulation of speech by time, place, and manner set forth in this Act, the Secretary shall—

“(I) notify the complainant and the institution not more than 7 days after the date of the determination that the institution will lose eligibility to receive funds under this Act, including participation in any program under this title, in accordance with this subparagraph;

“(II) notify the institution that the loss of eligibility shall go into ef-

1 fect beginning with any student noti-
2 fied of acceptance for admission to the
3 institution during the academic year
4 subsequent to the academic year dur-
5 ing which the determination is made,
6 and that no restoration of eligibility
7 for ineligible students in subsequent
8 academic years will occur prior to the
9 beginning of the third academic year
10 subsequent to the academic year dur-
11 ing which the determination is made;

12 “(III) explain and justify the de-
13 termination in a written decision cit-
14 ing relevant legal precedent, copies of
15 which shall be sent to the complain-
16 ant, the institution, and made avail-
17 able for public inspection, including
18 for online reading by the public; and

19 “(IV) require the institution to
20 post the determination of the Sec-
21 retary on the website of the institu-
22 tion, within two clicks of the home-
23 page, without a paywall, email login,
24 or other restriction to access.

1 “(ii) CONTINUED ELIGIBILITY.—Each
2 student enrolled at the institution during
3 the academic year in which eligibility is
4 lost as described in this subparagraph, and
5 each student notified of acceptance for ad-
6 mission to the institution during the aca-
7 demic year in which eligibility is lost as de-
8 scribed in this subparagraph, shall con-
9 tinue to be eligible to participate, through
10 the institution, in programs funded under
11 this Act during the 5-year period after the
12 date of the loss of eligibility.

13 “(F) RESTORATION OF ELIGIBILITY.—

14 “(i) IN GENERAL.—Not later than 7
15 days after the loss of eligibility under sub-
16 paragraph (E), the Secretary shall inform
17 the institution that it may restore eligi-
18 bility, either by certifying to the Secretary
19 that it has entirely withdrawn the policy
20 that precipitated loss of eligibility, or by
21 submitting a revised policy for review at
22 any time following the failure of the Final
23 Review.

24 “(ii) REVIEW OF REVISED POLICY.—
25 The Secretary shall review a revised policy

1 submitted for review after the loss of eligi-
2 bility and determine not later than 120
3 days after the date the revised policy is
4 submitted whether it is consistent with the
5 expressive rights of students under the
6 First Amendment to the Constitution of
7 the United States and with the restrictions
8 on the regulation of speech by time, place,
9 and manner set forth in this Act.

10 “(iii) INVESTIGATION.—While con-
11 ducting a review to restore eligibility under
12 this subparagraph, the Secretary may con-
13 duct an investigation in which further in-
14 formation may be sought or requested
15 from the institution, or any other source
16 the Secretary determines pertinent.

17 “(iv) WRITTEN DECISION.—In making
18 a determination of whether a revised policy
19 submitted for review after the loss of eligi-
20 bility is either consistent or inconsistent
21 with the expressive rights of students
22 under the First Amendment to the Con-
23 stitution of the United States and with the
24 restrictions on the regulation of speech by
25 time, place, and manner set forth in this

1 Act, the Secretary shall explain and justify
2 the determination in a written decision cit-
3 ing relevant legal precedent, copies of
4 which shall be sent to the complainant, the
5 institution, and made available for public
6 inspection, including for online reading by
7 the public.

8 “(v) LIMIT ON REVIEW.—The Sec-
9 retary may conduct not more than 1 review
10 to restore eligibility for a single institution
11 in any given academic year.

12 “(vi) RESTORATION.—If an institu-
13 tion certifies to the Secretary that the pol-
14 icy that precipitated the loss of eligibility
15 has been entirely withdrawn, or if Sec-
16 retary determines that the revised policy
17 submitted for review is consistent with the
18 expressive rights of students under the
19 First Amendment to the Constitution of
20 the United States and with the restrictions
21 on the regulation of speech by time, place,
22 and manner set forth in this Act, the insti-
23 tution’s eligibility to receive funds under
24 this Act, including participation in any
25 program under this title, shall be restored

1 not earlier than the beginning of the third
2 academic year following the year in which
3 notification of loss of eligibility was re-
4 ceived.

5 “(G) GOOD FAITH REPRESENTATION.—

6 “(i) IN GENERAL.—The Secretary
7 shall inform any institution undergoing re-
8 view of its campus speech policies that it
9 expects the institution to represent its poli-
10 cies, along with any proposed revisions in
11 such policies, in good faith.

12 “(ii) MISREPRESENTATION.—

13 “(I) COMPLAINTS.—A student,
14 student organization, or any other
15 person or organization may file, with
16 the employee in the Office of Postsec-
17 ondary Education of the Department
18 designated by the Secretary under
19 paragraph (2) to receive complaints, a
20 complaint that an institution has sub-
21 stantially misrepresented its speech
22 policies, or withheld information re-
23 quested by the Secretary during an
24 investigation, or attempted to cir-
25 cumvent the review process by reinsti-

1 tuting a policy under review in a sub-
2 stantially similar form without inform-
3 ing the Secretary.

4 “(II) LOSS OF ELIGIBILITY.—If
5 the Secretary determines upon inves-
6 tigation, or after receiving a complaint
7 under subclause (I), that an institu-
8 tion has substantially misrepresented
9 its speech policies, or withheld infor-
10 mation requested by the Secretary
11 during an investigation, or attempted
12 to circumvent the review process by
13 reinstating a policy under review in
14 a substantially similar form without
15 informing the Secretary, the institu-
16 tion shall lose eligibility to receive
17 funds under this Act, including par-
18 ticipation in any program under this
19 title.

20 “(iii) LOSS OF ELIGIBILITY.—If an in-
21 stitution loses eligibility under clause (ii),
22 the Secretary shall notify the institution,
23 not later than 7 days after the determina-
24 tion, that the loss of eligibility shall go into
25 effect beginning with any student notified

of acceptance for admission to the institution during the academic year subsequent to the academic year during which the determination is made, and that no restoration of eligibility for students admitted in subsequent academic years will occur prior to the beginning of the third academic year subsequent to the academic year during which the determination is made.

“(f) RETALIATION PROHIBITED.—

“(1) IN GENERAL.—No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this section.

“(2) SPECIFIC CIRCUMSTANCES.—

“(A) EXERCISE OF FIRST AMENDMENT RIGHTS.—The exercise of rights protected under the First Amendment to the Constitution of the United States does not constitute retaliation prohibited under paragraph (1).

“(B) CODE OF CONDUCT VIOLATION FOR MATERIALLY FALSE STATEMENT.—Charging an individual with a code of conduct violation for

1 making a materially false statement in bad
 2 faith in the course of a grievance proceeding
 3 under this section does not constitute retalia-
 4 tion prohibited under paragraph (1). A deter-
 5 mination regarding responsibility, alone, is not
 6 sufficient to conclude that any party made a
 7 materially false statement in bad faith.

8 **“SEC. 493F. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**
 9 **VERSITIES.**

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

13 “(1) post in one place on the website of the in-
 14 stitution all policies that pertain to the protection
 15 and regulation of the expressive rights of students,
 16 including the right to submit a complaint under this
 17 section, within 2 clicks of the homepage, without a
 18 paywall, email login, or other restriction to access;

19 “(2) include a copy of such policies in a hand-
 20 book distributed to new students; and

21 “(3) send a copy of—

22 “(A) such policies to the employee of the
 23 Department designated by the Secretary to re-
 24 ceive such policies; and

1 “(B) any updates to such policies to such
2 employee not later than 60 days after the date
3 of a change to such policies.

4 “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-
5 SURE.—Each private institution of higher education de-
6 scribed in subsection (a) shall include with the copy of the
7 policies described in subsection (a)—

8 “(1) a statement affirming that all policies per-
9 tinent to the protection and regulation of the expres-
10 sive rights of students have been disclosed in the
11 manner required by this section, along with an ac-
12 ceptance of contractual obligation to publicly disclose
13 all such policies; and

14 “(2) a statement affirming that publication of
15 such policies as required by this section establishes
16 a contractual obligation on the part of the institu-
17 tion to its students to maintain and enforce the dis-
18 closed policies, and only those policies, in matters
19 pertaining to the protection and regulation of the ex-
20 pressive rights of students.

21 “(c) CAUSE OF ACTION.—

22 “(1) AUTHORIZATION.—A student claiming
23 that a private institution of higher education in
24 which the student is enrolled has violated any re-
25 quirement or contractual obligation imposed by this

1 section may bring an action in a Federal court of
 2 competent jurisdiction to enjoin such violation or to
 3 recover compensatory damages, reasonable court
 4 costs, or reasonable attorney fees.

5 “(2) ACTIONS.—Notwithstanding any other
 6 provision of law, in an action brought under this
 7 subsection, the Federal court shall decide de novo all
 8 relevant questions of fact and law, including the in-
 9 terpretation of constitutional, statutory, and regu-
 10 latory provisions, unless the parties stipulate other-
 11 wise. In an action brought under this subsection, if
 12 the court finds a violation of subsection (b), the
 13 court—

14 “(A) shall—

15 “(i) enjoin the violation; and

16 “(ii) award the student—

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

19 “(II) if the student notifies the
 20 institution of the violation, \$50 for
 21 each day the violation continues after
 22 the notification if the institution did
 23 not act to discontinue the cause of the
 24 violation; and

25 “(B) may award a prevailing plaintiff—

1 “(i) compensatory damages;

2 “(ii) reasonable court costs; or

3 “(iii) reasonable attorney fees.

4 “(d) SECRETARIAL REQUIREMENTS.—

5 “(1) DESIGNATION OF AN EMPLOYEE.—The
6 Secretary shall designate an employee in the Office
7 of Postsecondary Education in the Department who
8 shall—

9 “(A) receive and compile updated copies of
10 all policies pertaining to the protection and reg-
11 ulation of the expressive rights of students at
12 private institutions of higher education that re-
13 ceive funds under this section, including any
14 programs under this title;

15 “(B) preserve all records of such policies
16 for a period of not less than 10 years and make
17 such policies, and the dates they were disclosed,
18 modified, or withdrawn, available for public in-
19 spection, including for online reading by the
20 public;

21 “(C) receive complaints from students, stu-
22 dent organizations, or from any other person or
23 organization, that believes a private institution
24 of higher education has not disclosed a policy
25 pertaining to the protection and regulation of

the expressive rights of students as required by this section, is enforcing a policy pertaining to the expressive rights of students that has not been disclosed as required by this section, or has failed to make and publish a statement affirming contractual responsibility for full policy disclosure, or affirming contractual responsibility for the enforcement of speech policies, as required by this section;

“(D) not more than 7 days after the date of receipt of a complaint under subparagraph (C), review the complaint and request a response from the institution;

“(E) undertake an investigation, in response to a complaint under subparagraph (C) or at the Secretary’s independent initiative, to determine whether a private institution of higher education has failed to disclose a policy pertaining to the protection and regulation of the expressive rights of students as required by this section, is enforcing a policy pertaining to the expressive rights of students that has not been disclosed as required by this section, or has failed to make and publish a statement affirming contractual responsibility for full policy dis-

1 closure, or affirming contractual responsibility
2 for the enforcement of speech policies, as re-
3 quired by this section; and

4 “(F) determine, not later than 120 days
5 after the date of receipt of a complaint or 120
6 days after the date of the start of an investiga-
7 tion opened at the Secretary’s independent ini-
8 tiative, whether the private institution of higher
9 education in question has failed to disclose a
10 policy pertaining to the protection and regula-
11 tion of the expressive rights of students as re-
12 quired by this section, is enforcing a policy per-
13 taining to the expressive rights of students that
14 has not been disclosed as required by this sec-
15 tion, or has failed to make and publish a state-
16 ment affirming contractual responsibility for
17 full speech policy disclosure, or affirming con-
18 tractual responsibility for the enforcement of
19 speech policies, as required by this section.

20 “(2) LOSS OF ELIGIBILITY.—

21 “(A) IN GENERAL.—If the Secretary deter-
22 mines that a private institution of higher edu-
23 cation has failed to disclose a policy pertaining
24 to the protection and regulation of the expres-
25 sive rights of students as required by this sec-

tion, is enforcing a policy pertaining to the expressive rights of students that has not been disclosed as required by this section, or has failed to make and publish a statement affirming contractual responsibility for full speech policy disclosure, or affirming contractual responsibility for the enforcement of speech policies, as required by this section, the Secretary shall notify the institution and, if applicable, the complainant, not more than 7 days after the date of such determination, that the institution is out of compliance with the requirements for receiving funds under this Act, including participation in any program under this title, but will be granted a grace period of 60 days to return to compliance before formally losing eligibility for receiving funds under this Act, including participation in any program under this title.

“(B) SPECIFICATIONS IN NOTIFICATION.—

As part of the notification under subparagraph (A), the Secretary shall specify which policies need to be disclosed and which statements affirming contractual responsibility for speech policy disclosure and contractual responsibility

1 for speech policy enforcement need to be made
2 and published in order for eligibility to be re-
3 stored.

4 “(C) NOTIFICATION OF LOSS OF ELIGI-
5 BILITY.—

6 “(i) IN GENERAL.—If the Secretary
7 determines that, 60 days after being noti-
8 fied that it is out of compliance as de-
9 scribed in subparagraph (A), the institu-
10 tion has failed to return to compliance by
11 making the appropriate speech policy dis-
12 closures, or statement affirming contrac-
13 tual responsibility for full speech policy
14 disclosure, or statement affirming contrac-
15 tual responsibility for speech policy en-
16 forcement, the Secretary shall notify the
17 institution and, if applicable, the complain-
18 ant, not more than 7 days after the date
19 of 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 go into effect beginning with any

1 student notified of acceptance for ad-
 2 mission to the institution during the
 3 academic year subsequent to the aca-
 4 demic year during which the deter-
 5 mination is made, and that no res-
 6 toration of eligibility for ineligible stu-
 7 dents in subsequent years will occur
 8 prior to the beginning of the third
 9 academic year subsequent to the aca-
 10 demic year during which the deter-
 11 mination is made; and

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

18 “(ii) CONTINUED ELIGIBILITY.—Each
 19 student enrolled at the institution during
 20 the academic year in which eligibility is
 21 lost as described in this subparagraph, and
 22 each student notified of acceptance for ad-
 23 mission to the institution during the aca-
 24 demic year in which eligibility is lost as de-
 25 scribed in this subparagraph, shall con-

1 tinue to be eligible to participate, through
2 the institution, in programs funded under
3 this Act during the 5-year period after the
4 date of the loss of eligibility.

5 “(3) RESTORATION OF ELIGIBILITY.—

6 “(A) IN GENERAL.—Not later than 7 days
7 after the loss of eligibility under paragraph (2),
8 the Secretary shall inform the institution that it
9 may restore eligibility by making the appro-
10 priate speech policy disclosures, or statement
11 affirming contractual responsibility for full
12 speech policy disclosure, or statement affirming
13 contractual responsibility for speech policy en-
14 forcement, as directed by the Secretary in con-
15 formity with this section.

16 “(B) REVIEW.—The Secretary shall review
17 any policy disclosures, or statement affirming
18 contractual responsibility for full speech policy
19 disclosure, or statement affirming contractual
20 responsibility for speech policy enforcement,
21 and determine whether they are sufficient to re-
22 store eligibility for receiving funds under this
23 Act, including participation in any program
24 under this title, not later than 120 days after

1 the date of receipt of such disclosures or state-
2 ment.

3 “(C) INVESTIGATION.—While conducting a
4 review to restore eligibility under this para-
5 graph, the Secretary may conduct an investiga-
6 tion in which further information may be
7 sought or requested from the institution, or any
8 other source the Secretary determines perti-
9 nent.

10 “(D) RESTORATION.—If the Secretary de-
11 termines that the institution under review to re-
12 store eligibility under this paragraph has made
13 the policy disclosures, and issued the statement
14 affirming contractual responsibility for full
15 speech policy disclosure, and the statement af-
16 firming contractual responsibility for speech
17 policy enforcement, as required by this section,
18 the institution’s eligibility to receive funds
19 under this Act, including participation in any
20 program under this title, shall be restored not
21 earlier than the beginning of the third academic
22 year following the year in which notification of
23 loss of eligibility was received.

24 “(E) LIMIT ON REVIEW.—The Secretary
25 may conduct not more than 1 review to restore

1 eligibility for a single institution in any given
2 academic year.

3 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—

4 This section shall not apply to an institution of higher
5 education that is controlled by a religious organization.”.

