

20 USCS § 1011a

Current through PL 115-60, approved 9/15/17

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§ 1011a. Protection of student speech and association rights

(a) Protection of rights.

- (1)** It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this Act, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.
- (2)** It is the sense of Congress that--
 - (A)** the diversity of institutions and educational missions is one of the key strengths of American higher education;
 - (B)** individual institutions of higher education have different missions and each institution should design its academic program in accordance with its educational goals;
 - (C)** an institution of higher education should facilitate the free and open exchange of ideas;
 - (D)** students should not be intimidated, harassed, discouraged from speaking out, or discriminated against;
 - (E)** students should be treated equally and fairly; and
 - (F)** nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.

(b) Construction. Nothing in this section shall be construed--

- (1)** to discourage the imposition of an official sanction on a student that has willfully participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of the institution of higher education, provided that the imposition of such sanction is done objectively and fairly; or
- (2)** to prevent an institution of higher education from taking appropriate and effective action to prevent violations of State liquor laws, to discourage binge drinking and other alcohol abuse, to protect students from sexual harassment including assault and date rape, to prevent hazing, or to regulate unsanitary or unsafe conditions in any student residence.

(c) Definitions. For the purposes of this section:

- (1) Official sanction.** The term "official sanction"--
 - (A)** means expulsion, suspension, probation, censure, condemnation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education or administrative unit of the institution; and
 - (B)** includes an oral or written warning made by an official of an institution of higher education acting in the official capacity of the official.

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- (2) Protected association. The term "protected association" means the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.
- (3) Protected speech. The term "protected speech" means speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

History

(Nov. 8, 1965, [P.L. 89-329](#), Title I, Part B, § 112, as added Oct. 7, 1998, [P.L. 105-244](#), Title I, § 101(a), *112 Stat. 1591*; Aug. 14, 2008, [P.L. 110-315](#), Title I, § 104, *122 Stat. 3090*.)

Annotations

Notes

References in text:

"This Act", referred to in this section, is Act Nov. 8, 1965, [P.L. 89-329](#), popularly known as the Higher Education Act of 1965, which appears generally as [20 USCS §§ 1001](#) et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

A prior § 1011a (Act Nov. 8, 1965, [P.L. 89-329](#), Title I, Part B, § 122, as added July 23, 1992, [P.L. 102-325](#), Title I, § 101, *106 Stat. 462*) was omitted in the general amendment of Title I of Act Nov. 8, 1965, [P.L. 89-329](#), by Act Oct. 7, 1998, [P.L. 105-244](#), Title I, § 101(a), *112 Stat. 1585*. Such section authorized grants to States for assistance to articulation partnerships between qualified 2- and 4-year institutions.

Effective date of section:

This section took effect on Oct. 1, 1998, pursuant to § 3 of Act Oct. 7, 1998, [P.L. 105-244](#), which appears as [20 USCS § 1001](#) note.

Amendments:

2008 . Act Aug. 14, 2008 (effective on enactment, as provided by § 3 of such Act, which appears as [20 USCS § 1001](#) note), in subsec. (a), designated the existing provisions as para. (1), and added para. (2); and in subsec. (b)(1), inserted ", provided that the imposition of such sanction is done objectively and fairly".

Case Notes

Higher Education Act (HEA) did not provide any express or implied private rights of action for violations of its provisions; consequently, student's HEA claim failed as matter of law. [Key v Robertson \(2009, ED Va\) 626 F Supp 2d 566](#).

Research References & Practice Aids

Law Review Articles:

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Storch; Wachs. A Legal Matter: Peer-to-Peer File Sharing, the Digital Millennium Copyright Act, and the Higher Education Opportunity Act: How Congress and the Entertainment Industry Missed an Opportunity to Stem Copyright Infringement. [74 Alb L Rev 313, 2010/2011](#).

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