

A Bill

To establish procedural protections applicable to student conduct disciplinary proceedings at public institutions of higher education, and for other purposes.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Student and Administration Equality Act.”

SEC. 2. DEFINITIONS.

(1) For purposes of this Act, the following terms shall have the following meanings, unless the context clearly requires otherwise:

- a. “Disciplinary proceeding” means an investigatory interview or hearing or any other procedure conducted by the public institution of higher education relating to the alleged violation that the student or student organization reasonably believes may result in disciplinary action against the student or student organization.
- b. “Fully participate” means the opportunity to be present, make opening and closing statements, to examine and cross-examine witnesses, and to provide the accuser or accused student or student organization with support, guidance, and advice. This Act does not require an institution of higher education to use formal rules of evidence in disciplinary proceedings. The institution, however, shall make good faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative.
- c. “Public institutions of higher education” or “institutions” means those public institutions defined in [Citation to state statute].

SEC. 3. PROCEDURAL PROTECTIONS

(1) The institution shall maintain an administrative file of all disciplinary proceedings. The file shall include all documents and evidence in the institution's possession or control relevant to the alleged violation and the institution's investigation, including but not limited to exculpatory evidence, statements by the accuser and accused student, third-party witness statements, electronically stored information, written communications, social media posts, demonstrative evidence, documents submitted by

any participant, and the institution's choice of a video recording, audio recording, or transcript of any disciplinary hearing ultimately held in the matter. The file shall not include privileged documents or internal memorandums that the institution does not intend to introduce as evidence at any hearing on the matter.

(2) The code of student conduct at each public institution of higher education shall include the following disciplinary rights and procedures for a student enrolled at an institution of higher education who is accused of violating the nonacademic disciplinary or conduct rules that carry a potential penalty of a suspension of 10 or more days or expulsion and a student organization officially recognized by a public institution of higher education that is accused of a violation that is punishable by suspension or removal of the student organization from the institution:

- a. The right to be represented at the student's or the student organization's expense by an attorney or, if the student or student organization prefers, by a non-attorney advocate, who in either case may fully participate during the disciplinary procedure or other procedure adopted and used by the public institution of higher education except as provided under Section 3, Subsection 3 of this Act. The right of the student or the student organization to be represented, at the student's or the student organization's expense, by the student's or the student organization's choice of either an attorney or a non-attorney advocate, also applies until the conclusion of any campus appellate process.
- b. The express presumption of innocence and that the accused student or the student organization may not be deemed guilty of the violation until the accused student or the student organization formally acknowledges responsibility or the conclusion of a hearing in which the institution has established every element of the alleged violation.
- c. The right to a live hearing and the right to:
 1. Be present at a hearing;
 2. Make an opening and closing statement;
 3. Present relevant evidence; and
 4. Cross-examine adverse witnesses through counsel or, at the student or student organization's sole discretion, a non-attorney advocate. If the student or student organization does not have counsel or a non-attorney advocate to conduct the

cross-examination, the institution shall either appoint one to perform this function, or provide an alternative method for conducting meaningful cross-examination.

- d. Before the disciplinary proceeding is scheduled, and at least two business days before a student or a student organization may be questioned by an institution of higher education or by an agent of the institution of higher education about allegations of violations, the university must advise the student in writing of:
 1. His or her rights under this Act, including a description of the disciplinary procedures and how they comply with the requirements of this section.
 2. The allegations against the student, including sufficient details about any alleged violation to prepare a response. Sufficient details shall include the specific policy or policies allegedly violated, the conduct allegedly constituting a violation, the date and location of the alleged incident, and the identities of any parties involved in the incident. If, in the course of an investigation, the institution decides to investigate allegations about the student that are not included in the notice provided pursuant to this section, the institution must provide notice of the additional allegations to the parties in accordance with the requirements of this section.
- e. Any student or student organization that is found to be in violation of the institution's non-academic or conduct rules shall be afforded an opportunity to appeal the institution's initial decision to an appellate entity that is an institutional employee or body that did not make the initial decision. Such an appeal shall be filed within 90 days after receiving final notice of the institution's decision. The institution may designate the appellate entity as the final institutional authority on the matter. Nothing in this Act shall preclude a court from granting a prevailing plaintiff equitable relief.
- f. Reasonable continuing access to the administrative file and the ability to make copies of all evidence or documents in the file beginning at least seven business days prior to any disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of the administrative file shall be redacted if disclosure of the evidence is required by law.

- g. The disciplinary proceedings are carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles. For the purposes of this paragraph, an institution shall be considered to be commingling such roles if any individual carries out more than one of the following roles with respect to the proceeding:
1. Advocate or counselor for a complaining or accused student.
 2. Investigator.
 3. Institutional prosecutor.
 4. Adjudicator.
 5. Appellate adjudicator

(3) A student shall not have the right under this Act to be represented by a licensed attorney or non-attorney advocate for any allegation of academic dishonesty as defined by the public institution of higher education.

(4) This Act does not create a right of a student or student organization to be represented at public expense.

(5) The code of student conduct at each public institution of higher education shall include the right of the accuser in disciplinary proceedings subject to Subsection 2 of this Section, that arise from a complaint by a student against another student:

- a. To be represented at his or her own expense by a licensed attorney or, if the complaining student prefers, a non-attorney advocate, who may fully participate during the disciplinary procedure or other procedure adopted by the institution. The right of the accuser to be represented, at the accuser's expense, by the student's or the student organization's choice of either an attorney or a non-attorney advocate, also applies until the conclusion of any campus appellate process; and
- b. To have reasonable continuing access to the administrative file and the ability to make copies of all evidence or documents in the file beginning at least seven business days prior to any disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of

the administrative file shall be redacted if disclosure of the evidence is required by law.

(6) Where required by federal law, the right to appeal shall be extended to a student accuser. In these cases, the student accuser and the accused student shall be provided simultaneous notification of the institution's procedures to appeal the result of the disciplinary proceeding.

(7) Nothing in this Act shall be interpreted to impair an institution's ability to take reasonable interim measures necessary to ensure the physical safety of members of the campus community during a timely investigation and adjudication of a student disciplinary issue, including but not limited to the ability to make adjustments in student housing arrangements, impose conditions of no contact between the accused student and the accuser, temporarily suspend a student, or ban a student from campus. Such reasonable interim measures shall require:

- a. Within twenty-four (24) hours, written notice to the accused student of the interim measures that explains the institution's reasons for enacting the interim measures;
- b. Within three (3) business days of the written notice, unless otherwise waived by the accused student, an interim measure hearing to determine whether there is substantial evidence that the accused student poses a risk to the physical safety of a member of the campus community and that the interim measure is appropriate to mitigate that risk; and
- c. At the interim measure hearing, the accuser and the accused student shall have the right to be represented by an attorney or non-attorney advocate who may fully participate in the interim measure hearing. An accused student's waiver of the right to an interim measure hearing shall not constitute an admission of guilt or a waiver of any additional rights afforded under this Act.

SEC. 4. CAUSE OF ACTION.

(1) Any student or student organization whose rights under this Act have been violated may bring an action in any State Court of competent jurisdiction or may bring an action under this Act in Federal Court.

(2) In an action brought under this Act, if the State Court finds a violation of this Act, the Court shall award the aggrieved person or student organization

compensatory damages, reasonable court costs, and attorneys' fees, including expert fees, monetary damages of not less than the cost of tuition paid by the student or on the student's behalf to the institution of higher education for the semester during which the violation of the Act occurred, plus monetary damages of not less than the amount of any scholarship funding lost as a result of the campus discipline, and any other relief in equity or law as deemed appropriate including, but not limited to, a *de novo* rehearing at the institution of higher education, in accordance with this Act.

SEC. 5. STATUTE OF LIMITATIONS.

(1) A person or student organization must bring suit for violation of this Act not later than one year after the day the cause of action accrues. For purposes of calculating the one-year limitation period, the cause of action shall be deemed accrued on the date that the student or student organization receives final notice of discipline from the institution of higher education.

(2) This Act takes effect on [DATE] and applies to disciplinary proceedings beginning on or after that date.