

1 AN ACT relating to student discipline at public postsecondary education
2 institutions.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 →Section 1. KRS 164.370 is amended to read as follows:

5 *(1) For the purposes of this section:*

6 *(a) "Complainant" means a student who has formally filed a complaint*
7 *alleging that the student is the victim of a violation of the code of student*
8 *conduct promulgated by the governing body of an institution;*

9 *(b) "Institution" means the following public postsecondary education*
10 *institutions: University of Kentucky, University of Louisville, Eastern*
11 *Kentucky University, Kentucky State University, Morehead State University,*
12 *Murray State University, Northern Kentucky University, and Western*
13 *Kentucky University;*

14 *(c) "Governing board" means the boards of trustees or boards of regents of an*
15 *institution;*

16 *(d) "Participant" means a respondent or a complainant;*

17 *(e) "Respondent" means a student who has been formally accused of a*
18 *violation of the code of student conduct promulgated by the governing*
19 *board of an institution;*

20 *(f) "Student" has the same meaning as in KRS 164.348; and*

21 *(g) "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C.*
22 *sec. 1681 et seq., applicable federal regulations, and binding federal judicial*
23 *precedent.*

24 *(2) Each governing board shall adopt a code of student conduct that clearly sets forth*
25 *the rules for nonacademic student conduct and establishes disciplinary*
26 *procedures to enforce those rules. The disciplinary procedures shall set forth*
27 *rules for establishing the admissibility of evidence that are consistent with KRS*

1 13B.090, KRE 412, and Title IX.

2 (3) At a minimum, when a violation is punishable by a suspension or expulsion from
3 the institution or termination of a respondent's residence in campus housing, the
4 disciplinary procedures contained in the code of student conduct shall:

5 (a) 1. Afford a respondent the presumption that the respondent is innocent
6 and has not committed a violation of the code of student conduct until
7 the institution has established every element of the alleged violation;
8 and

9 2. Clearly state that the presumption afforded by subparagraph 1. of this
10 paragraph shall not be construed to mean that the complainant or any
11 witness has presented false testimony or evidence;

12 (b) Provide a participant written notice of:

13 1. A formal charge of an alleged violation and the specific details of the
14 facts upon which the alleged violation is based;

15 2. The rights of the participant as set forth in this section, the code of
16 student conduct, and any other applicable law; and

17 3. The date, time, and location of each phase of the disciplinary process
18 at least:

19 a. Three (3) business days prior to any scheduled event at which the
20 participant is expected to appear, including any meeting or
21 interview that serves an investigative purpose; and

22 b. Ten (10) business days prior to any disciplinary hearing;

23 (c) 1. Require the institution to maintain an administrative file of the
24 disciplinary proceedings. The file shall include all documents and
25 evidence in the institution's possession or control relevant to the
26 alleged violation and the institution's investigation thereof, including
27 but not limited to exculpatory evidence, documents submitted by any

- 1 participant, and the institution's choice of a video recording, an audio
2 recording, or a transcript of any disciplinary hearing ultimately held
3 in the matter. The file shall not include privileged documents or
4 internal memorandums that the institution does not intend to
5 introduce as evidence at any hearing on the matter;
- 6 2. Provide a participant reasonable continuing access to the
7 administrative file and the ability to make copies of all evidence or
8 documents contained therein beginning at least seven (7) business
9 days prior to any disciplinary hearing, except that individual portions
10 of the administrative file may be redacted if disclosure of the evidence
11 is otherwise prohibited by law;
- 12 3. Require that all documentary or tangible evidence that the institution
13 or a participant intends to introduce at a disciplinary hearing be
14 submitted to the administrative file at least three (3) business days
15 prior to the disciplinary hearing. Any documentary or tangible
16 evidence that is submitted less than three (3) days prior to the
17 disciplinary hearing shall only be admissible upon the discretion of
18 the hearing officer. An institution shall immediately notify a
19 participant when documents and evidence are added to the
20 administrative file within three (3) business days of a disciplinary
21 hearing;
- 22 4. Require that the institution and participants submit a list of all
23 witnesses the institution or participant expects to call at the
24 disciplinary hearing to the administrative file at least three (3)
25 business days prior to the hearing. Additional witnesses submitted less
26 than three (3) business days prior to the disciplinary hearing shall
27 only be permitted upon the discretion of the hearing officer. An

1 institution shall immediately notify a participant when a witness is
2 added to list of institutional witnesses within three (3) business days of
3 a disciplinary hearing;

4 5. Require that only evidence contained in the administrative file that is
5 determined by the hearing officer to be relevant and admissible may be
6 considered in the determination of whether a violation occurred,
7 including but not limited to the audio recording, video recording, or
8 transcript of any disciplinary hearing ultimately held in the matter;
9 and

10 6. Require that the institution maintain the administrative file:

11 a. Permanently if a violation results in the expulsion of a student;
12 and

13 b. In all other matters, the later of either:

14 i. Three (3) years after the respondent's graduation or last
15 date of attendance; or

16 ii. Three (3) years after all sanctions have been met;

17 (d) Provide a participant the right to:

18 1. Be present and participate meaningfully at any disciplinary hearing,
19 interim measure hearing, or other scheduled event where the rights of
20 the respondent are to be determined, except as restricted by Title IX;

21 2. Fair and impartial treatment at each phase of the disciplinary process,
22 which shall exclude any individual that conducts an investigation or
23 presides over an alternative dispute resolution process related to the
24 matter from participating as a hearing adjudicator or on a hearing
25 tribunal; and

26 3. Provide a limited waiver of the confidentiality of any phase of the
27 disciplinary process to permit the attendance of any support person so

1 long as that person would not violate the privacy rights of another
2 student or substantially delay the disciplinary process. A support
3 person shall have no right to participate unless the support person is
4 attending as an advisor to the participant in accordance with Title IX;
5 and

6 (e) In addition to the rights set forth in paragraphs (a) to (d) of this subsection,
7 if an alleged violation is punishable by a final order of suspension of three
8 (3) or more days, expulsion from the institution, or termination of a
9 respondent's residence in campus housing, provide a participant:

10 1. At the participant's own expense, the right to be represented by
11 counsel or, if required by Title IX, an adviser, at each material phase
12 of the disciplinary process, including but not limited to any alternative
13 dispute resolution phase, meeting, hearing, or appeal of the matter.
14 Upon written notification of representation, this right shall require an
15 institution to direct all correspondence related to the disciplinary
16 proceeding to both the participant's counsel or advisor and to the
17 participant; and

18 2. At any hearing, the right to:

19 a. Make opening and closing statements;

20 b. Present relevant evidence; and

21 c. Cross-examine any testimony personally or through counsel.

22 Cross-examination of a student who is a victim or the
23 complainant that is personally conducted by a respondent shall
24 require:

25 i. The participant to submit the questions to a neutral
26 hearing officer. The neutral hearing officer shall ask all
27 relevant questions to the student witness during the live

1 hearing, state the specific rationale for excluding any
 2 question, and grant a participant the right to amend a
 3 question that has been excluded in order to cure any
 4 objection thereto sustained by the hearing officer, and to
 5 submit follow-up questions to the student witness; and

6 ii. Cross-examination be restricted as required by Title IX or
 7 other applicable federal law.

8 (4) (a) Subject to subsection (3) of this section, a governing board~~Each board of~~
 9 ~~regents~~ may invest the faculty, administration, or a representative committee
 10 of designated faculty, staff, and students with the power to suspend or expel
 11 any student from the institution, or otherwise discipline a student, for a
 12 violation of~~disobedience to~~ its code of student conduct~~its rules, or for any~~
 13 ~~other contumacy, insubordination or immoral conduct]. [In every case of~~
 14 ~~suspension or expulsion of a student]~~

15 (b) If, after a hearing on the matter, a violation results in a final order of
 16 suspension of a respondent for three (3) or more days, expulsion of a
 17 respondent from the institution, or termination of a respondent's residence
 18 in campus housing, the disciplinary procedures shall grant the respondent
 19 the right to~~the person suspended or expelled may~~ appeal to the governing
 20 board or its designee~~of regents~~. The disciplinary procedures~~board of~~
 21 ~~regents~~ shall prescribe the manner and the mode of procedure on appeal. The
 22 decision of the governing board or its designee~~of regents~~ shall be a final
 23 order.

24 (c) If, after a hearing on the matter, an allegation of conduct that constitutes
 25 sexual discrimination as defined by Title IX does not result in a finding of a
 26 violation, the disciplinary procedures shall grant the complainant the right
 27 to appeal to the governing board or its designee in the same manner as

1 prescribed to the respondent pursuant to paragraph (b) of this subsection.

2 (d) Notwithstanding KRS 13B.020(2)(i), a respondent, or a complainant as
3 required by Title IX, shall have the right to appeal a final order of the
4 governing board or its designee in accordance with KRS 13B.140, except
5 that a participant who has the final order overturned for a violation of this
6 section shall be entitled to actual damages from the institution, including
7 reasonable attorney's fees and court costs.

8 (5) Nothing in this section shall be interpreted to:

9 (a) Impede or delay law enforcement officials in investigating an alleged
10 violation of local, state, or federal law;

11 (b) Impair an institution's ability to take reasonable interim measures
12 necessary to ensure the physical safety of members of the campus
13 community during a timely investigation and adjudication of a student
14 disciplinary issue, including but not limited to the ability to make
15 adjustments in student housing arrangements, impose conditions of no
16 contact between the respondent and complainant, temporarily suspend a
17 student, or ban a student from campus. Such reasonable interim measures
18 shall require:

19 1. Within twenty-four (24) hours, written notice of the interim measures
20 that explains the institution's reasons for enacting the interim
21 measures; and

22 2. Within three (3) business days of the written notice, unless otherwise
23 waived by the respondent, an interim measure hearing to determine
24 whether there is substantial evidence that the respondent poses a risk
25 to the physical safety of a member of the campus community and that
26 the interim measure is appropriate to mitigate that risk. At the interim
27 measure hearing, a respondent shall have the right to be represented

1 as set forth in subsection (3)(e)1. of this section. A respondent's waiver
2 of the right to an interim measure hearing shall not constitute an
3 admission of guilt or a waiver of any additional rights afforded under
4 Sections 1 and 2 of this Act;

5 (c) Impair an institution's duty or ability to implement any measure necessary
6 to effectuate a valid judicial order, including but not limited to termination
7 of a respondent's residence in campus housing. Notwithstanding paragraph
8 (b) of this subsection, measures necessary to effectuate a judicial order shall
9 not be subject to an interim measure hearing;

10 (d) Impair an institution's ability to terminate a student's residence in campus
11 housing for any reason other than a violation of the code of student
12 conduct, including but not limited to a breach of any housing contract
13 between the student and campus housing;

14 (e) Impair an institution's ability to require one (1) or more complainants to
15 serve as a representative of a class of student victims if:

- 16 1. The class is so numerous that joinder of all members is impracticable;
17 2. There are questions of law or fact common to the class;
18 3. The claims or defenses of the representatives are typical of the claims
19 or defenses of the class; and
20 4. The representative parties will fairly and adequately protect the
21 interests of the class; or

22 (f) Limit any additional rights afforded to a student under federal law,
23 including Title IX or the Jeanne Clery Disclosure of Campus Security
24 Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. sec. 1092(f).

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
26 READ AS FOLLOWS:

27 (1) By July 1, 2023, and by July 1 every three (3) years thereafter, each institution, as

1 defined in Section 1 of this Act, shall electronically publish a report on student
2 discipline to a prominent location on the institution's Web site. The first report
3 shall have a one (1) year reporting period, and each report thereafter shall have a
4 three (3) year reporting period. Each report on student discipline shall be
5 submitted to the Interim Joint Committee on Education no later than September
6 1 of the year the report is due to be published. The report on student discipline
7 shall include but is not limited to:

8 (a) Without providing any personally identifiable information, the total number
9 of disciplinary proceedings, including formal investigations, initiated by the
10 institution for an alleged violation of the institution's code of student
11 conduct during the reporting period, and of those, the total number and
12 percentage of disciplinary proceedings that resulted in:

- 13 1. A dismissal of the complaint by the institution prior to a hearing on
14 the matter;
- 15 2. A negotiated resolution or agreement prior to a hearing on the matter;
- 16 3. A hearing on the matter;
- 17 4. A dismissal of the complaint by the institution after a hearing on the
18 matter;
- 19 5. Suspension of a student;
- 20 6. Expulsion of a student;
- 21 7. Termination of a student's residence in campus housing;
- 22 8. An appeal to the governing board or its designee of the institution in
23 accordance with subsection (4)(b) of Section 1 of this Act; and
- 24 9. An appeal from a final decision of the governing board or its designee
25 of the institution in accordance with subsection (4)(c) of Section 1 of
26 this Act; and

27 (b) Without providing any personally identifiable information, for each data

1 point required by paragraph (a) of this subsection:

2 1. A summary of the basic demographics of the students that were the
3 subject of the disciplinary proceedings included in that figure,
4 including but not limited to race, gender, whether the student resided
5 in campus housing at the time the violation allegedly occurred, and
6 the approximate number of credit hours earned;

7 2. The specific rule in the code of student conduct alleged to have been
8 violated;

9 3. The general source of the initial information underlying the alleged
10 violation, including but not limited to another student, faculty, staff,
11 community member, or law enforcement; and

12 4. The percentage of students that were the subject of the disciplinary
13 proceedings included in that figure that were represented by an
14 attorney licensed to practice law in Kentucky.

15 (2) (a) If a public postsecondary education institution believes, due to federal law,
16 that any specific data point required by paragraphs (a) and (b) of subsection
17 (1) of this section cannot be adequately deidentified for public reporting, the
18 institution shall submit a request for an exemption to the reporting
19 requirement established in subsection (1) of this section for each specific
20 data point to the Attorney General. The Attorney General shall review the
21 request for exemption to determine whether each data point submitted can
22 be adequately deidentified.

23 (b) A request for exemption shall be submitted no later than April 1 of the year
24 the report is due to be published. The Attorney General shall make all
25 reasonable efforts to grant or deny any request for exemption within sixty
26 (60) days of receipt.

27 (c) 1. If the request for an exemption is granted, the report on student

1 discipline published by the institution shall clearly identify each
2 specific data point excluded pursuant to the exemption.

3 2. If an institution fails to submit a timely request for exemption, the
4 Attorney General fails to grant or deny a timely filed request for
5 exemption in the sixty (60) day time frame, or the request for
6 exemption is denied and the institution continues to believe that a
7 specific data point cannot be adequately deidentified, the institution
8 shall:

9 a. In the report on student discipline published by the institution,
10 clearly identify each specific data point excluded pursuant to the
11 institution's objection that is not substantiated pursuant to an
12 exemption from the Attorney General; and

13 b. Submit a confidential, supplemental report to the Interim Joint
14 Committee on Education by July 1 of each year in which the
15 report on student discipline is due. The supplemental report shall
16 identify each data point the institution believes cannot be
17 adequately deidentified and clearly set forth the reasoning for
18 the institution's position. The committee may consider each
19 supplemental report as it determines and in its discretion. Each
20 supplemental report, and the consideration thereof by the
21 committee, shall be exempt from the open records and open
22 meetings requirements contained in KRS Chapter 61.

23 →Section 3. This Act may be cited as the Kentucky Campus Due Process
24 Protection Act.