

2022 Regular Session

HOUSE BILL NO. 364

BY REPRESENTATIVE MCKNIGHT

HIGHER EDUCATION: Provides relative to disciplinary proceedings for students enrolled in public postsecondary education institutions and student-led organizations

1 AN ACT

2 To enact R.S. 17:3394, relative to the powers and duties of public postsecondary education
3 management boards; to require a disciplinary hearing process for students and
4 student organizations accused of committing non-academic offenses; and to provide
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. This Act shall be known and may be cited as the "Student Due Process
8 and Protection Act".

9 Section 2. R.S. 17:3394 is hereby enacted to read as follows:

10 §3394. Disciplinary proceedings

11 A. Each public postsecondary education management board shall adopt a
12 policy relative to disciplinary proceedings, right to counsel for students and student
13 organizations, and appeals.

14 B. Any student enrolled at an institution under the jurisdiction of the
15 management board has the right to be represented, at the student's expense, by an
16 attorney or a non-attorney advocate who may fully participate during any
17 disciplinary proceeding or during any other procedure adopted and used by that
18 institution to address an alleged violation of the institution's non-academic rules or
19 policies. This right applies to both the student who has been accused of the violation
20 and to the student who is the accuser or victim, if applicable. Prior to scheduling a

1 disciplinary proceeding, the institution shall inform the students in writing of their
2 rights as provided by this Section.

3 C. Any student organization officially recognized by an institution under the
4 jurisdiction of the management board has the right to be represented, at the
5 organization's expense, by an attorney or a non-attorney advocate who may fully
6 participate during any disciplinary proceeding or during any other procedure adopted
7 and used by the institution to address an alleged violation of the institution's non-
8 academic rules or policies. This right applies to both the student organization that
9 has been accused of the alleged violation and the accuser or victim, if applicable.

10 D. A student or student organization subject to a charge or disciplinary
11 proceeding by the institution is entitled, upon receiving notice of the charge, to
12 notice of any and all violations of the institution's non-academic rules or policies and
13 the disciplinary proceedings or charges that will occur as a result. This notice shall
14 include but need not be limited to each and every section of the institution's rules or
15 policies that the student or student organization is alleged to have violated and any
16 evidence the institution used and collected in making the charge.

17 E.(1) Any student or student organization subject to a charge or disciplinary
18 proceeding by the institution is entitled to all evidence obtained in the investigation
19 of the charge or disciplinary proceeding, including from witnesses, written evidence,
20 and statements taken.

21 (2) To the extent any of the witnesses, written evidence, or statements taken
22 include the victim or witness of sexual assault provided in R.S. 14:41, 42 through
23 43.5, 89, 89.1, or 106, the names of the victims or witnesses may be redacted to
24 protect their identities, if deemed necessary.

25 F.(1) Any student or student organization that is found to be in violation of
26 the institution's non-academic rules or policies shall be afforded an opportunity to
27 appeal the institution's initial decision to an institutional administrator or body that
28 did not make the initial decision. Such an appeal shall be filed within ninety days
29 after receiving final notice of the institution's decision. The right to appeal the result

1 of the institution's disciplinary proceeding also applies to the student who is the
2 accuser or victim, if applicable.

3 (2) The right of the student or student organization as provided in
4 Subsections A and B of this Section to be represented, at the student's or the
5 organization's expense, by the student's or the organization's attorney or non-attorney
6 advocate also applies to the appeal.

7 (3) The issues that may be raised on appeal include new evidence,
8 contradictory evidence, and evidence that the student or student organization was not
9 afforded due process. The institutional body considering the appeal may consider
10 police reports, transcripts, and the outcome of any civil or criminal proceeding
11 directly related to the appeal.

12 G. Upon consideration of the evidence, the institutional body considering the
13 appeal may grant the appeal, deny the appeal, order a new hearing, or reduce or
14 modify the punishment. If the appeal results in the reversal of the decision or a
15 lessening of the sanction, the institution may reimburse the student for any tuition
16 and fees paid for the period of suspension or expulsion which had not been
17 previously refunded, if applicable.

18 H. For purposes of this Section, "fully participate" includes the opportunity
19 to make opening and closing statements, to examine and cross-examine witnesses,
20 and to provide the accuser or accused with support, guidance, and advice. This
21 Section does not require an institution to use formal rules of evidence in institutional
22 disciplinary proceedings. The institution, however, shall make good faith efforts to
23 include relevant evidence and exclude evidence which is neither relevant nor
24 probative.

25 I. This Section does not affect the obligation of an institution to provide
26 equivalent rights to a student who is the accuser or victim in the disciplinary
27 proceeding, including equivalent opportunities to have others present during an
28 institutional disciplinary proceeding, to an unrestricted choice of attorney or non-
29 attorney advocate in any meeting or institutional disciplinary proceeding, and to be

1 provided simultaneous notification of the institution's procedures for the accused and
2 the accuser or victim to appeal the result of the institutional disciplinary proceeding.

3 J.(1) Any student or student organization that has its rights under this Section
4 violated may bring a private right of action to recover actual damages. If the court
5 finds this Section or the student or student organization's rights to due process have
6 been violated, after being put on notice by the attorney general, the court shall award
7 three times the actual damages sustained. If damages are awarded under this
8 Subsection, the court shall award to the person or organization bringing such action
9 reasonable attorney fees and costs.

10 (2) Upon commencement of any action brought under Paragraph (1) of this
11 Subsection, the plaintiff's attorney or non-attorney advocate shall mail a copy of the
12 petition to the attorney general and, upon entry of any judgment or decree in the
13 action, shall mail a copy of the judgement or decree to the attorney general. Failure
14 to conform with this Paragraph shall not affect any of the plaintiff's rights under this
15 Subsection.

16 (3) This Section may also be enforced by the office of the attorney general
17 if, in its discretion, it finds the institution engages in repeated violations of due
18 process and the rights preserved under this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 364 Original

2022 Regular Session

McKnight

Abstract: Establishes procedure for public postsecondary students to be represented by an attorney or non-attorney advocate in certain disciplinary hearings.

Proposed law requires public postsecondary education management boards to establish policies relative to the procedure for students or student organizations being charged with non-academic offenses to use an attorney or non-attorney advocate in their defense at disciplinary proceedings and appeal hearings.

Such a policy shall apply to a student or student organization being accused of violating a non-academic rule or policy and shall include:

- (1) Requirements for notice of a charge being brought against a student or student organization.

- (2) The opportunity for a student or student organization to appeal a decision that it was in violation of a non-academic policy or rule within 90 days of the decision.
- (3) A procedure for presenting evidence.
- (4) The victim or accuser having an opportunity to be represented by an attorney or non-attorney advocate.

Provides for the role of the attorney general in the enforcement of proposed law.

Authorizes a court to award treble damages for a violation of proposed law.

Provides exception for disclosing identity of victims of sexual assault.

(Adds R.S. 17:3394)