

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2073

By: Caldwell (Chad)

4
5
6 AS INTRODUCED

7 An Act relating to higher education; enacting the
8 Student and Administration Equality Act; defining
9 terms; directing institutions to maintain
10 administrative file; requiring inclusion of certain
11 content in the code of student conduct; requiring
12 written notice of rights; granting opportunity to
13 appeal decisions in certain situations; requiring
14 reasonable access to administrative file; prohibiting
15 commingling of administrative or adjudicative roles;
16 stipulating no right to an attorney for academic
dishonesty; stipulating no right to be represented at
public expense; directing that the code of student
conduct shall include certain rights to accusers in
disciplinary proceedings; providing appeals
proceedings; clarifying reasonable interim measures
that the university may reasonably carry out;
creating a right of action; creating a statute of
limitations; providing for codification; and
providing an effective date.

17
18
19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3260 of Title 70, unless there
22 is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Student and
24 Administration Equality Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3261 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Disciplinary proceeding" means an investigatory interview
6 or hearing or any other proceeding conducted by the public
7 institution of higher education relating to the alleged violation
8 that the student or student organization reasonably believes may
9 result in disciplinary action against the student or student
10 organization;

11 2. "Fully participate" means the opportunity to be present,
12 make opening and closing statements, examine and cross-examine
13 witnesses, and provide the accuser or accused student or student
14 organization with support, guidance, and advice. This act does not
15 require a public institution of higher education to use formal rules
16 of evidence in disciplinary proceedings. The institution, however,
17 shall make good-faith efforts to include relevant evidence and
18 exclude evidence that is neither relevant nor probative; and

19 3. "Public institutions of higher education" or "institutions"
20 means any institution supported wholly or in part by direct
21 legislative appropriations and offering courses of education of any
22 kind beyond or in addition to the twelfth grade, or its equivalent,
23 as such grade is generally understood and accepted in the public
24

1 school system of Oklahoma, whether called a university, college,
2 junior college, school, or academy.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3262 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The public institution of higher education shall maintain an
7 administrative file of all disciplinary proceedings. The file shall
8 include all documents and evidence in the institution's possession
9 or control relevant to the alleged violation and the institution's
10 investigation, including but not limited to exculpatory evidence,
11 statements by the accuser and accused student, third-party witness
12 statements, electronically stored information, written
13 communications, social media posts, demonstrative evidence,
14 documents submitted by any participant, and the institution's choice
15 of a video recording, audio recording, or transcript of any
16 disciplinary hearing ultimately held in the matter. The file shall
17 not include privileged documents or internal memorandums that the
18 institution does not intend to introduce as evidence at any hearing
19 on the matter.

20 B. The code of student conduct at each public institution of
21 higher education shall include the following disciplinary rights and
22 proceedings for a student enrolled at a public institution of higher
23 education who is accused of violating the nonacademic disciplinary
24 or conduct rules that carry a potential penalty of a suspension of

1 ten (10) or more days or expulsion and a student organization
2 officially recognized by a public institution of higher education
3 that is accused of a violation that is punishable by suspension or
4 removal of the student organization from the institution:

5 1. The right to be represented at the student's or the student
6 organization's expense by an attorney or, if the student or student
7 organization prefers, by a nonattorney advocate, who in either case
8 may fully participate during the disciplinary proceeding or other
9 proceeding adopted and used by the public institution of higher
10 education except as provided under subsection C of this section.
11 The right of the student or the student organization to be
12 represented, at the student's or the student organization's expense,
13 by the student's or the student organization's choice of either an
14 attorney or a nonattorney advocate, also applies until the
15 conclusion of any campus appellate process;

16 2. The express presumption of innocence and that the accused
17 student or the student organization may not be deemed guilty of the
18 violation until the accused student or the student organization
19 formally acknowledges responsibility or the conclusion of a hearing
20 in which the institution has established every element of the
21 alleged violation;

22 3. The right to a live hearing and the right to:
23 a. be present at a hearing,
24 b. make an opening and closing statement,

- 1 c. present relevant evidence, and
- 2 d. cross-examine adverse witnesses through counsel or, at
- 3 the student or student organization's sole discretion,
- 4 a nonattorney advocate. If the student or student
- 5 organization does not have counsel or a nonattorney
- 6 advocate to conduct the cross-examination, the
- 7 institution shall either appoint one to perform this
- 8 function or provide an alternative method for
- 9 conducting meaningful cross-examination;

10 4. Before the disciplinary proceeding is scheduled, and at

11 least two (2) business days before a student or a student

12 organization may be questioned by a public institution of higher

13 education or by an agent of the institution of higher education

14 about allegations of violations, the university must advise the

15 student or student organization of their rights under this act in

16 writing;

17 5. Any student or student organization that is found to be in

18 violation of the institution's nonacademic or conduct rules shall be

19 afforded an opportunity to appeal the institution's initial decision

20 to an appellate entity that is an institutional employee or body

21 that did not make the initial decision. Such an appeal shall be

22 filed within ninety (90) days after receiving final notice of the

23 institution's decision. The institution may designate the appellate

24 entity as the final institutional authority on the matter. Nothing

1 in this act shall preclude a court from granting a prevailing
2 plaintiff equitable relief;

3 6. Reasonable continuing access to the administrative file and
4 the ability to make copies of all evidence or documents in the file
5 beginning at least seven (7) business days prior to any disciplinary
6 hearing, or sooner if otherwise specified under federal law, except
7 that individual portions of the administrative file shall be
8 redacted if disclosure of the evidence is required by law; and

9 7. The disciplinary proceedings are carried out free from
10 conflicts of interest by ensuring that there is no commingling of
11 administrative or adjudicative roles. For the purposes of this
12 paragraph, an institution shall be considered to be commingling such
13 roles if any individual carries out more than one of the following
14 roles with respect to the proceeding:

- 15 a. advocate or counselor for a complaining or accused
16 student,
- 17 b. investigator,
- 18 c. institutional prosecutor,
- 19 d. adjudicator, or
- 20 e. appellate adjudicator.

21 C. A student shall not have the right under this act to be
22 represented by a licensed attorney or nonattorney advocate for any
23 allegation of academic dishonesty as defined by the public
24 institution of higher education.

1 D. This act does not create a right of a student or student
2 organization to be represented at public expense.

3 E. The code of student conduct at each public institution of
4 higher education shall include the right of the accuser in
5 disciplinary proceedings subject to subsection B of this section,
6 that arise from a complaint by a student against another student:

7 1. To be represented at his or her own expense by a licensed
8 attorney or, if the complaining student prefers, a nonattorney
9 advocate, who may fully participate during the disciplinary
10 proceeding or other proceeding adopted by the institution. The
11 right of the accuser to be represented, at the accuser's expense, by
12 the student's or the student organization's choice of either an
13 attorney or a nonattorney advocate, also applies until the
14 conclusion of any campus appellate process; and

15 2. To have reasonable continuing access to the administrative
16 file and the ability to make copies of all evidence or documents in
17 the file beginning at least seven (7) business days prior to any
18 disciplinary hearing, or sooner if otherwise specified under federal
19 law, except that individual portions of the administrative file
20 shall be redacted if disclosure of the evidence is required by law.

21 F. Where required by federal law, the right to appeal shall be
22 extended to a student accuser. In these cases, the student accuser
23 and the accused student shall be provided simultaneous notification
24

1 of the institution's proceedings to appeal the result of the
2 disciplinary proceeding.

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

12 1. Within twenty-four (24) hours, written notice to the accused
13 student of the interim measures that explains the institution's
14 reasons for enacting the interim measures;

15 2. Within three (3) business days of the written notice, unless
16 otherwise waived by the accused student, an interim measure hearing
17 to determine whether there is substantial evidence that the accused
18 student poses a risk to the physical safety of a member of the
19 campus community and that the interim measure is appropriate to
20 mitigate that risk; and

21 3. At the interim measure hearing, the accuser and the accused
22 student shall have the right to be represented by an attorney or
23 nonattorney advocate, who may fully participate in the interim
24 measure hearing. An accused student's waiver of the right to an

1 interim measure hearing shall not constitute an admission of guilt
2 or a waiver of any additional rights afforded under this act.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3263 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any student or student organization whose rights under this
7 act have been violated may bring an action in any state court of
8 competent jurisdiction or may bring an action under this act in
9 federal court.

10 B. In an action brought under this act, if the state court
11 finds a violation of this act, the court shall award the aggrieved
12 person or student organization compensatory damages, reasonable
13 court costs, and attorney fees, including expert fees, monetary
14 damages of not less than the cost of tuition paid by the student or
15 on the student's behalf to the public institution of higher
16 education for the semester during which the violation of the act
17 occurred, plus monetary damages of not less than the amount of any
18 scholarship funding lost as a result of the campus discipline, and
19 any other relief in equity or law as deemed appropriate including,
20 but not limited to, a de novo rehearing at the public institution of
21 higher education, in accordance with this act.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3264 of Title 70, unless there
24 is created a duplication in numbering, reads as follows:

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

7 SECTION 6. This act shall become effective November 1, 2023.

8

9 59-1-7055 MJ 01/04/23

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24