

1 **SENATE FLOOR VERSION**

2 February 18, 2020

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1466

6 By: Daniels of the Senate

7 and

8 Lepak of the House

9 An Act relating to higher education; creating the
10 Student and Administration Equality Act; providing
11 short title; providing definitions; providing a right
12 to representation to students enrolled in certain
13 institutions of higher education during certain
14 disciplinary proceedings; providing for type of
15 participation; clarifying application of certain
16 rules and evidence; requiring institutions to advise
17 certain students of certain rights prior to certain
18 proceeding and certain questioning; providing for
19 contents of notice; clarifying that certain students
20 do not have a right to representation; providing a
21 right to representation to certain student
22 organizations during certain disciplinary
23 proceedings; requiring an institution to provide
24 certain hearing; requiring an institution to provide
certain opportunity to cross-examine; applying
certain right to representation until the conclusion
of certain appellate process; providing certain
construction; requiring an institution to provide
access to certain evidence; requiring an institution
to ensure certain proceedings are free from certain
conflicts of interest; clarifying obligation of
certain institutions to provide certain equivalent
rights; clarifying use of temporary suspension;
creating a cause of action; requiring awarding of
damages, court costs and fees; providing time
limitation on causes of action; clarifying
application of act; providing for codification;
providing an effective date; and declaring an
emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2129 of Title 70, unless there
4 is created a duplication in numbering, reads as follows:

5 A. This act shall be known and may be cited as the "Student and
6 Administration Equality Act".

7 B. As used in this act, unless the context otherwise requires,
8 the term "institutions of higher education" or "institution" shall
9 mean an institution within The Oklahoma State System of Higher
10 Education.

11 C. A student enrolled at an institution of higher education who
12 is accused of a violation of the disciplinary or conduct rules that
13 carries a potential penalty of a suspension of ten (10) or more days
14 or expulsion shall have the right to be represented at the student's
15 expense by a licensed attorney or, if the student prefers, a
16 nonattorney advocate, who in either case may fully participate
17 during the disciplinary proceeding or other proceeding adopted and
18 used by the institution of higher education except as provided for
19 in subsection D of this section. When disciplinary proceedings
20 subject to this section arise from a complaint by a student against
21 another student, the complaining student shall also have the right
22 to be represented at his or her own expense by a licensed attorney
23 or, if the complaining student prefers, a nonattorney advocate.

24

1 D. For purposes of this section, "fully participate" includes
2 the opportunity to make opening and closing statements, to examine
3 and cross-examine witnesses and to provide the accuser or accused
4 with support, guidance and advice. The provisions of this section
5 do not require an institution of higher education to use formal
6 rules of evidence in disciplinary proceedings. The institution,
7 however, through its entity that considers disciplinary matters,
8 shall make good faith efforts to include relevant evidence and
9 exclude evidence that is neither relevant nor probative.

10 E. Before the disciplinary proceeding is scheduled and at least
11 two (2) business days before a student may be questioned by an
12 institution of higher education or by an agent of the institution of
13 higher education about allegations of violations of the
14 institution's disciplinary or conduct rules, when the charges are
15 punishable by a suspension of ten (10) or more days or expulsion,
16 the institution shall advise the student in writing of his or her
17 rights under this act. The notice shall at a minimum include:

18 1. The allegations included in the complaint;

19 2. The specific sections of the disciplinary or conduct code
20 that he or she is charged with violating and written notice of the
21 specific actions alleged to have violated them, including the time,
22 date, place and people involved;

23 3. Instructions on procedures for responding to the
24 allegations;

1 4. A clear statement explicitly guaranteeing that an accused
2 student shall be presumed innocent of the allegations against them
3 and that it is the obligation of the institution to prove every
4 element of every alleged offense before the accused student may be
5 found responsible and punished for committing an alleged offense;

6 5. Relevant procedural dates, including the hearing date; and

7 6. Deadlines for responding.

8 F. A student shall not have the right pursuant to this act to
9 be represented by a licensed attorney or nonattorney advocate for
10 any allegation of academic dishonesty as defined by the institution
11 of higher education.

12 G. A student organization that is officially recognized by an
13 institution of higher education and that is accused of a violation
14 of disciplinary or conduct rules shall have the right to be
15 represented, at the student organization's expense, by a licensed
16 attorney or, if the student organization prefers, a nonattorney
17 advocate, who in either case may fully participate during the
18 disciplinary proceeding or other proceeding adopted and used by the
19 institution.

20 H. For the purposes of this section, "disciplinary proceeding"
21 includes an investigatory interview or hearing or any other
22 proceeding conducted by the institution of higher education relating
23 to the alleged violation that the student or student organization
24 reasonably believes may result in disciplinary action against the

1 student or the student organization. The disciplinary proceeding
2 shall be conducted at the direction of the institution of higher
3 education or its entity that considers disciplinary matters. An
4 institution shall provide the accused student or student
5 organization a live hearing where they can contest the allegations
6 but may use an alternative procedure, if both the accused and the
7 complainant voluntarily agree to do so.

8 I. If the institution has to choose between competing
9 narratives to resolve a case, the institution shall give the accused
10 student or, if the student prefers the accused student's advocate,
11 an opportunity to cross-examine the accuser and the adverse
12 witnesses in the presence of a neutral adjudicator.

13 J. The right of the student or the student organization under
14 subsection C or G of this section to be represented, at the
15 student's or the student organization's expense, by the student's or
16 the student organization's choice of either an attorney or a
17 nonattorney advocate, shall apply until the conclusion of any
18 institution appellate process.

19 K. The provisions of this section shall not be construed to
20 create a right of a student or student organization to be
21 represented at public expense.

22 L. The institution shall ensure that all parties to the
23 proceeding, including the accused student, the accused student
24 organization and, if applicable, the accusing student, have access

1 to all material evidence, including both inculpatory and exculpatory
2 evidence, no later than one week prior to the start of any formal
3 hearing or similar proceeding. The evidence may include but is not
4 limited to complainant statements, third-party witness statements,
5 electronically stored information, written communications, social
6 media posts and demonstrative evidence.

7 M. The institution shall ensure that the proceeding is carried
8 out free from conflicts of interest. For the purposes of this
9 subsection, an institution shall be considered to have a conflict of
10 interest if any individual carries out more than one of the
11 following roles with respect to the proceeding:

- 12 1. Victim counselor and victim advocate;
- 13 2. Investigator;
- 14 3. Institutional prosecutor;
- 15 4. Adjudicator; or
- 16 5. Appellate adjudicator.

17 N. The provisions of this section do not affect the obligation
18 of an institution to provide equivalent rights to a student who is
19 the accuser or victim in the disciplinary proceeding under this
20 section, including equivalent opportunities to have others present
21 and fully participating during any institutional disciplinary
22 proceeding, to not limit the choice of attorney or nonattorney
23 advocate in any meeting or institutional disciplinary proceeding and
24 to provide simultaneous notification of the institutions'

1 proceedings for the accused and the accuser or victim to appeal the
2 result of the institutional disciplinary proceeding.

3 O. Nothing in this act shall be deemed to prevent the temporary
4 suspension of a student pending an investigation.

5 P. 1. Any student or student organization whose rights under
6 this act have been violated may bring an action in any state court
7 of competent jurisdiction.

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

20 Q. A student or student organization shall bring suit for
21 violation of this act no later than one (1) year after the day the
22 cause of action accrues. For purposes of calculating the one-year
23 limitation period, the cause of action shall be deemed accrued on
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1 the date that the student or student organization receives final
2 notice of discipline from the institution.

3 R. The provisions of this section shall apply to all
4 disciplinary proceedings beginning on or after the effective date of
5 this act.

6 SECTION 2. This act shall become effective July 1, 2020.

7 SECTION 3. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION
12 February 18, 2020 - DO PASS AS AMENDED
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