

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 633

By: Daniels

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5
6 AS INTRODUCED

7 An Act relating to higher education; creating the
8 Student and Administration Equality Act; providing
9 short title; providing definitions; providing a right
10 to representation to students enrolled in certain
11 institutions of higher education during certain
12 disciplinary proceedings; providing for type of
13 participation; clarifying application of certain
14 rules and evidence; requiring institutions to advise
15 certain students of certain rights prior to certain
16 proceeding and certain questioning; providing for
17 contents of notice; clarifying that certain students
18 do not have a right to representation; providing a
19 right to representation to certain student
20 organizations during certain disciplinary
21 proceedings; requiring an institution to provide
22 certain hearing; requiring an institution to provide
23 certain opportunity to cross-examine; requiring
24 institutions to provide certain advocate; applying
25 certain right to representation until the conclusion
26 of certain appellate process; providing certain
27 construction; requiring an institution to provide
28 access to certain evidence; requiring an institution
29 to ensure certain proceedings are free from certain
30 conflicts of interest; clarifying obligation of
31 certain institutions to provide certain equivalent
32 rights; clarifying use of certain disciplinary
33 measures; providing for notice and hearing; creating
34 a cause of action; requiring awarding of damages,
35 court costs and fees; providing time limitation on
36 causes of action; clarifying application of act;
37 providing for codification; providing an effective
38 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 non-academic disciplinary or conduct
13 rules that carries a potential penalty of a suspension of ten (10)
14 or more days or expulsion shall have the right to be represented at
15 the student's expense by a licensed attorney or, if the student
16 prefers, a nonattorney advocate, who in either case may fully
17 participate during the disciplinary proceeding including any hearing
18 regarding interim disciplinary measures, or other proceeding adopted
19 and used by the institution of higher education except as provided
20 for in subsection D of this section. When disciplinary proceedings
21 subject to this section arise from a complaint by a student against
22 another student, the complaining student shall also have the right
23 to be represented at his or her own expense by a licensed attorney
24 or, if the complaining student prefers, a nonattorney advocate.

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. Nothing in this section
5 prohibits institutions from maintaining and enforcing rules of
6 decorum applicable to advocates to ensure that their participation
7 is not disruptive. The provisions of this section do not require an
8 institution of higher education to use formal rules of evidence in
9 disciplinary proceedings. The institution, however, through its
10 entity that considers disciplinary matters, shall make good faith
11 efforts to include relevant evidence and exclude evidence that is
12 neither relevant nor probative. The institution shall provide an
13 explanation for its rejection of any evidence excluded from the
14 proceeding, on the record, so that the decision may be reviewed in
15 the event of an appeal.

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

1 1. The allegations included in the complaint;

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

6 3. Instructions on procedures for responding to the
7 allegations;

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

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

14 6. Deadlines for responding.

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

19 G. A student organization that is officially recognized by an
20 institution of higher education and that is accused of a violation
21 of disciplinary or conduct rules shall have the right to be
22 represented, at the student organization's expense, by a licensed
23 attorney or, if the student organization prefers, a nonattorney
24 advocate, who in either case may fully participate during the

1 disciplinary proceeding or other proceeding adopted and used by the
2 institution, except as provided for in subsection D of this section.

3 H. For the purposes of this section, "disciplinary proceeding"
4 includes an investigatory interview or hearing or any other
5 proceeding conducted by the institution of higher education relating
6 to an alleged violation that may result in disciplinary action
7 against the student or the student organization. The disciplinary
8 proceeding shall be conducted at the direction of the institution of
9 higher education or its entity that considers disciplinary matters.
10 An institution shall provide the accused student or student
11 organization a live hearing where they can contest the allegations
12 but may use an alternative procedure, if both the accused and the
13 complainant voluntarily agree to do so.

14 I. If the institution has to choose between competing
15 narratives to resolve an allegation, the institution shall give the
16 accused student's advocate an opportunity to cross-examine the
17 accuser and the adverse witnesses in the presence of a neutral
18 adjudicator. In such cases, the institution shall also give the
19 accusing student's advocate an opportunity to cross-examine adverse
20 witnesses. Nothing in this section shall compel an accused student
21 to testify; however, if an accused student chooses to provide
22 testimony, the institution shall give the accusing student's
23 advocate an opportunity to cross-examine the accused student in the
24 presence of a neutral adjudicator. If either student does not have

1 an advocate, the institution shall provide them an advocate, free
2 from bias or a conflict of interest and without cost to the student,
3 to conduct the cross-examination. No students may conduct cross-
4 examinations of another party except through their advocates.

5 J. The right of the student or the student organization under
6 subsection C or G of this section to be represented, at the
7 student's or the student organization's expense, by the student's or
8 the student organization's choice of either an attorney or a
9 nonattorney advocate, shall apply until the conclusion of any
10 institution appellate process.

11 K. The provisions of this section shall not be construed to
12 create a right of a student or student organization to be
13 represented at public expense except that an institution shall
14 provide an advocate during cross-examination if a student or student
15 organization does not already have an advocate, as provided for in
16 subsection I of this section.

17 L. The institution shall ensure that all parties to the
18 proceeding including the accused student, the accused student
19 organization and, if applicable, the accusing student, have access
20 to all material evidence in the institution's possession, unless the
21 evidence's disclosure is prohibited by law. Evidence subject to
22 disclosure under this section shall include both inculpatory and
23 exculpatory evidence, no later than one week prior to the start of
24 any formal hearing or similar proceeding. The evidence may include

1 but is not limited to complainant statements, third-party witness
2 statements, electronically stored information, written
3 communications, social media posts and demonstrative evidence.

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

- 9 1. Victim counselor and victim advocate;
- 10 2. Investigator;
- 11 3. Institutional prosecutor;
- 12 4. Adjudicator; or
- 13 5. Appellate adjudicator.

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

1 O. Nothing in this act shall be deemed to prevent the
2 institution from imposing interim disciplinary measures if the
3 institution determines that a student poses a significant risk to
4 the physical health or safety of the accusing student or other
5 members of the institution's community. An institution shall inform
6 the accused student of any interim disciplinary measures in writing,
7 and within seventy-two (72) hours of such written notice, the
8 institution shall hold a hearing to determine whether safety
9 concerns warrant the extension of the interim disciplinary measures
10 until completion of the disciplinary process.

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

14 2. In a cause of action brought under this act, if the court
15 finds a violation of this act, the court shall award the aggrieved
16 student or student organization compensatory damages, reasonable
17 court costs and attorney fees, including expert fees, monetary
18 damages of not less than the cost of tuition paid by the student or
19 on the student's behalf to the institution for the semester during
20 which the violation of this act occurred, plus monetary damages of
21 not less than the amount of any scholarship funding lost as a result
22 of the institution discipline, and any other relief in equity or law
23 as deemed appropriate including but not limited to a de novo hearing
24

1 at the institution of higher education, in accordance with this
2 section.

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

9 R. The provisions of this section shall apply to any and all
10 disciplinary proceedings beginning on or after the effective date of
11 this act even if the complaint was filed with the institution or the
12 charge was brought by the institution prior to the effective date of
13 this act. When a successful appeal of a campus proceeding results
14 in a new hearing, the new hearing shall also be governed by the
15 provisions of this section, provided that the new hearing is
16 scheduled for any date after the effective date of this act.

17 SECTION 2. This act shall become effective July 1, 2021.

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

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