

**STUDENT RIGHT TO COUNSEL**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill enacts language related to disciplinary proceedings in an institution of higher education.

**Highlighted Provisions:**

This bill:

- ▶ enacts Title 53B, Chapter 27, Part 6, Student Legal Representation, including provisions:
  - requiring an institution of higher education to allow certain parties to have legal representation at a disciplinary proceeding;
  - governing the exchange of evidence at a disciplinary proceeding;
  - prohibiting certain conflicts of interest in a disciplinary proceeding; and
  - authorizing a cause of action; and
- ▶ amends applicable governmental immunity provisions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-7-301**, as last amended by Laws of Utah 2022, Chapters 388, 428



28 ENACTS:

29 **53B-27-601**, Utah Code Annotated 1953

30 **53B-27-602**, Utah Code Annotated 1953

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32 **53B-27-604**, Utah Code Annotated 1953

33 **53B-27-605**, Utah Code Annotated 1953

34 **53B-27-606**, Utah Code Annotated 1953

35 **53B-27-607**, Utah Code Annotated 1953

36 **53B-27-608**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **53B-27-601** is enacted to read:

40 **Part 6. Student Legal Representation**

41 **53B-27-601. Application.**

42 The provisions of this part may not be interpreted to:

43 (1) govern campus law enforcement departments or law enforcement personnel; or

44 (2) otherwise replace or amend criminal procedures that govern law enforcement

45 activities.

46 Section 2. Section **53B-27-602** is enacted to read:

47 **53B-27-602. Definitions.**

48 As used in this part:

49 (1) "Academic dishonesty" means an act of dishonesty relating to a student's academic  
50 work or performance.

51 (2) "Accused student" means an individual enrolled in an institution who has allegedly  
52 violated a policy or rule.

53 (3) "Accused student organization" means a student organization that has allegedly  
54 violated a policy or rule.

55 (4) "Alleged victim" means an individual whose rights are allegedly infringed or who  
56 is otherwise allegedly harmed by an accused student's or student organization's violation of a  
57 policy or rule.

58 (5) "Evidence" means information that is inculpatory or exculpatory as the information

59 relates to an accusation against an accused student or accused student organization, including:

60 (a) a complainant statement;

61 (b) a third-party witness statement;

62 (c) electronically stored information;

63 (d) a written communication;

64 (e) a post to social media; or

65 (f) demonstrative evidence.

66 (6) "Full participation" means the opportunity in a student or student organization

67 disciplinary proceeding to:

68 (a) make opening and closing statements;

69 (b) examine and cross-examine a witness;

70 (c) introduce relevant evidence; and

71 (d) provide support, guidance, or advice to an accused student, accused student

72 organization, or alleged victim.

73 (7) "Legal representation" means an attorney or, at a person's sole discretion, a

74 nonattorney advocate.

75 (8) "Policy or rule" means a policy or rule of an institution that, if violated, may result:

76 (a) for a student, in suspension of 10 calendar days or more or expulsion from the

77 institution; or

78 (b) for a student organization, in the suspension or the removal of institutional

79 recognition of the student organization.

80 (9) "Proceeding" means an adjudicatory meeting, whether formal or informal,

81 including an appeal, that is:

82 (a) required by a policy or rule; or

83 (b) held to determine whether a policy or rule has been violated.

84 (10) (a) "Student disciplinary proceeding" means a proceeding initiated by an

85 institution to determine whether an accused student has violated a policy or rule.

86 (b) "Student disciplinary proceeding" does not include a proceeding that solely

87 involves a student's academic dishonesty.

88 (11) "Student organization" means a club or other organization:

89 (a) that meets during noninstructional time;

90 (b) that is recognized by the institution at which the organization meets; and  
91 (c) the majority of whose members are current students at the institution.

92 (12) (a) "Student organization disciplinary proceeding" means a proceeding initiated by  
93 an institution to determine whether an accused student organization has violated a rule or  
94 policy.

95 (b) "Student organization disciplinary proceeding" does not include a proceeding that  
96 solely involves a student's academic dishonesty.

97 Section 3. Section **53B-27-603** is enacted to read:

98 **53B-27-603. Student disciplinary proceedings -- Legal representation.**

99 (1) An institution may not prohibit:

100 (a) an accused student from being represented, at the accused student's expense, by  
101 legal representation at a student disciplinary proceeding that pertains to the accused student; or

102 (b) an accused student's legal representation from full participation in a student  
103 disciplinary proceeding that pertains to the accused student.

104 (2) An institution may not prohibit:

105 (a) an alleged victim from being represented, at the alleged victim's expense, by legal  
106 representation at a student disciplinary proceeding that pertains to the alleged victim; or

107 (b) the alleged victim's legal representation from full participation in a student  
108 disciplinary proceeding that pertains to the alleged victim.

109 (3) (a) An institution shall provide an accused student described in Subsection (1) or an  
110 alleged victim described in Subsection (2) written notice of the accused student's or alleged  
111 victim's rights under this section.

112 (b) The notice provided to an accused student under Subsection (3)(a) shall notify the  
113 accused student that:

114 (i) the accused student is entitled to a student disciplinary proceeding to contest the  
115 charges against the accused student;

116 (ii) the accused student is entitled to a presumption of innocence; and

117 (iii) the presumption of innocence remains until:

118 (A) the accused student acknowledges responsibility for the alleged violation; or

119 (B) the institution has established every element of the alleged violation at a student  
120 disciplinary proceeding.

121 (c) Unless there are exigent circumstances that reasonably justify proceeding without  
122 providing notice under Subsection (3)(a), an institution shall establish policies and procedures  
123 to ensure that the institution provides written notice of the accused student's or alleged victim's  
124 rights as soon as practicable but no later than seven days before a student disciplinary  
125 proceeding that pertains to the accused student or alleged victim.

126 Section 4. Section **53B-27-604** is enacted to read:

127 **53B-27-604. Student organization disciplinary proceedings -- Legal**  
128 **representation.**

129 (1) An institution may not prohibit:

130 (a) an accused student organization from being represented, at the accused student  
131 organization's expense, by legal representation at a student organization disciplinary proceeding  
132 that pertains to the accused student organization; or

133 (b) an accused student organization's legal representation from full participation in a  
134 student organization disciplinary proceeding that pertains to the accused student organization.

135 (2) An institution may not prohibit:

136 (a) an alleged victim from being represented, at the alleged victim's expense, by legal  
137 representation at a student organization disciplinary proceeding that pertains to the alleged  
138 victim; or

139 (b) the alleged victim's legal representation from full participation in a student  
140 organization disciplinary proceeding that pertains to the alleged victim.

141 (3) (a) An institution shall provide an accused student organization described in  
142 Subsection (1) or an alleged victim described in Subsection (2) written notice of the accused  
143 student organization's or alleged victim's rights under this section.

144 (b) The notice provided to an accused student organization under Subsection (3)(a)  
145 shall notify the accused student organization that:

146 (i) the accused student organization is entitled to a student organization disciplinary  
147 proceeding to contest the charges against the accused student organization;

148 (ii) the accused student organization is entitled to a presumption of innocence; and

149 (iii) the presumption of innocence remains until:

150 (A) the accused student organization acknowledges responsibility for the alleged  
151 violation; or

152 (B) the institution has established every element of the alleged violation at a student  
153 organization disciplinary proceeding.

154 (c) Unless there are exigent circumstances that reasonably justify proceeding without  
155 providing notice under Subsection (3)(a), an institution shall establish policies and procedures  
156 to ensure that the institution provides written notice of the accused student organization's or  
157 alleged victim's rights as soon as practicable but no later than seven days before a student  
158 organization disciplinary proceeding that pertains to the accused student organization or  
159 alleged victim.

160 Section 5. Section **53B-27-605** is enacted to read:

161 **53B-27-605. Exchange of evidence.**

162 (1) (a) An institution shall ensure that an accused student, an alleged victim, or an  
163 accused student organization have access to all material evidence that is in the institution's  
164 possession, including both inculpatory and exculpatory evidence, unless the material is subject  
165 to a legal privilege, no later than one week before the start of a proceeding.

166 (b) During a proceeding, the institution shall make a good faith effort to:

167 (i) include relevant evidence; and

168 (ii) exclude non-relevant or non-probative evidence.

169 (2) Nothing in this part may be interpreted to:

170 (a) provide for formal or informal discovery beyond the exchange of evidence  
171 described in Subsection (1); or

172 (b) incorporate or bind an institution to:

173 (i) the Utah Rules of Civil Procedure or the Utah Rules of Evidence; or

174 (ii) the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

175 Section 6. Section **53B-27-606** is enacted to read:

176 **53B-27-606. Conflict of interest.**

177 (1) An institution shall conduct a student disciplinary proceeding or student  
178 organization disciplinary proceeding in an impartial manner free from conflicts of interests.

179 (2) Except as provided in Subsection (3), in order to avoid conflicts of interest created  
180 by a comingling of roles, an institution shall prohibit an individual employed by or otherwise  
181 representing an institution from acting as an adjudicator, hearing officer, or appellate hearing  
182 officer if the individual has also served in one of the following roles for purposes of a student

183 disciplinary proceeding or student organization disciplinary proceeding:

184 (a) an advocate or counselor for an alleged victim, accused student, or accused student  
185 organization;

186 (b) an investigator;

187 (c) an institutional prosecutor; or

188 (d) an advisor to a person described in Subsection (2)(a), (b), or (c).

189 (3) If an individual employed by the institution or otherwise representing the institution  
190 serves as an investigator and an institutional prosecutor for the alleged violation of a policy or  
191 rule, the institution shall advise an accused student, accused student organization, or alleged  
192 victim before the investigation proceeding.

193 (4) An individual may not serve as an investigator or institutional prosecutor and an  
194 advocate for an accused student, accused student organization, or alleged victim.

195 (5) In a proceeding conducted under this part, an institution shall allow an accused  
196 student, accused student organization, or an alleged victim to raise objections to issues that  
197 could potentially compromise the impartiality of the proceedings, including any potential  
198 conflicts of interest in violation of this section.

199 Section 7. Section **53B-27-607** is enacted to read:

200 **53B-27-607. Application -- Institution policies.**

201 (1) This part does not prohibit an institution from temporarily suspending an accused  
202 student or accused student organization pending the completion of a student or student  
203 organization disciplinary proceeding.

204 (2) (a) An institution shall enact policies to govern proceedings in which a student has  
205 a right to active counsel in accordance with this part.

206 (b) An institution may adopt a policy requiring the attorney or advocate of an accused  
207 student, accused student organization, or alleged victim to submit questions for an opposing  
208 party first to a hearing officer, provided that the hearing officer will only exclude questions that  
209 in the hearing officer's good faith interpretation are irrelevant or unduly prejudicial.

210 (c) A hearing officer shall place the hearing officer's rationale for excluding a question  
211 on the record for appellate review.

212 Section 8. Section **53B-27-608** is enacted to read:

213 **53B-27-608. Cause of action.**

214 (1) An accused student, accused student organization, or alleged victim may bring an  
215 action in a court for an alleged violation of this part by an institution.

216 (2) If the court finds that an institution committed a violation under Subsection (1), the  
217 court may award, as applicable, the accused student, accused student organization, or alleged  
218 victim:

- 219 (a) compensatory damages;
- 220 (b) reasonable court costs incurred;
- 221 (c) reasonable attorney fees incurred;

222 (d) monetary damages:  
223 (i) in an amount equal to or more than the cost of tuition paid by or on behalf of the  
224 accused student or alleged victim to the institution for the academic period in which the  
225 violation occurred; and

226 (ii) in an amount equal to or more than the amount of scholarship funding an accused  
227 student has lost as a result of the outcome of a student disciplinary proceeding; and

228 (e) any other relief the court determines just.

229 (3) An action based upon a cause of action under this part shall be commenced within  
230 one year after the date that an accused student, accused student organization, or alleged victim  
231 receives final notice of the outcome of the student or student organization disciplinary  
232 proceeding.

233 Section 9. Section **63G-7-301** is amended to read:

234 **63G-7-301. Waivers of immunity.**

235 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
236 obligation.

237 (b) Actions arising out of contractual rights or obligations are not subject to the  
238 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

239 (c) The Division of Water Resources is not liable for failure to deliver water from a  
240 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
241 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
242 condition, or safety condition that causes a deficiency in the amount of available water.

243 (2) Immunity from suit of each governmental entity is waived:

244 (a) as to any action brought to recover, obtain possession of, or quiet title to real or



245 personal property;

246 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
247 property, to determine any adverse claim on real or personal property, or to obtain an  
248 adjudication about any mortgage or other lien that the governmental entity may have or claim  
249 on real or personal property;

250 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
251 merchandise, or other property while it is in the possession of any governmental entity or  
252 employee, if the property was seized for the purpose of forfeiture under any provision of state  
253 law;

254 (d) subject to Section [63G-7-302](#), as to any action brought under the authority of Utah  
255 Constitution, Article I, Section 22, for the recovery of compensation from the governmental  
256 entity when the governmental entity has taken or damaged private property for public uses  
257 without just compensation;

258 (e) as to any claim for attorney fees or costs under Sections [63G-2-405](#) and [63G-2-802](#);

259 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
260 Act;

261 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
262 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
263 Land Use Act;

264 (h) except as provided in Subsection [63G-7-201\(3\)](#), as to any injury caused by:

265 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
266 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

267 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
268 or other public improvement;

269 (i) subject to Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any injury  
270 proximately caused by a negligent act or omission of an employee committed within the scope  
271 of employment;

272 (j) notwithstanding Subsection [63G-7-101\(4\)](#), as to a claim for an injury resulting from  
273 a sexual battery, as provided in Section [76-9-702.1](#), committed:

274 (i) against a student of a public elementary or secondary school, including a charter  
275 school; and

276 (ii) by an employee of a public elementary or secondary school or charter school who:

277 (A) at the time of the sexual battery, held a position of special trust, as defined in

278 Section 76-5-404.1, with respect to the student;

279 (B) is criminally charged in connection with the sexual battery; and

280 (C) the public elementary or secondary school or charter school knew or in the exercise

281 of reasonable care should have known, at the time of the employee's hiring, to be a sex

282 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex

283 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a

284 background check under Section 53G-11-402; [~~and~~]

285 (k) as to any action brought under Section 78B-6-2303; and

286 (l) as to any action brought to obtain relief under Title 53B, Chapter 27, Part 6, Student

287 Legal Representation.

288 (3) (a) As used in this Subsection (3):

289 (i) "Code of conduct" means a code of conduct that:

290 (A) is not less stringent than a model code of conduct, created by the State Board of

291 Education, establishing a professional standard of care for preventing the conduct described in

292 Subsection (3)(a)(i)(D);

293 (B) is adopted by the applicable local education governing body;

294 (C) regulates behavior of a school employee toward a student; and

295 (D) includes a prohibition against any sexual conduct between an employee and a

296 student and against the employee and student sharing any sexually explicit or lewd

297 communication, image, or photograph.

298 (ii) "Local education agency" means:

299 (A) a school district;

300 (B) a charter school; or

301 (C) the Utah Schools for the Deaf and the Blind.

302 (iii) "Local education governing board" means:

303 (A) for a school district, the local school board;

304 (B) for a charter school, the charter school governing board; or

305 (C) for the Utah Schools for the Deaf and the Blind, the state board.

306 (iv) "Public school" means a public elementary or secondary school.

- 307 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- 308 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering  
309 the term "child" in that section to include an individual under age 18.
- 310 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
311 claim against a local education agency for an injury resulting from a sexual battery or sexual  
312 abuse committed against a student of a public school by a paid employee of the public school  
313 who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- 314 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a  
315 code of conduct; and
- 316 (ii) before the sexual battery or sexual abuse occurred, the public school had:
- 317 (A) provided training on the code of conduct to the employee; and
- 318 (B) required the employee to sign a statement acknowledging that the employee has  
319 read and understands the code of conduct.
- 320 (4) (a) As used in this Subsection (4):
- 321 (i) "Higher education institution" means an institution included within the state system  
322 of higher education under Section 53B-1-102.
- 323 (ii) "Policy governing behavior" means a policy adopted by a higher education  
324 institution or the Utah Board of Higher Education that:
- 325 (A) establishes a professional standard of care for preventing the conduct described in  
326 Subsections (4)(a)(ii)(C) and (D);
- 327 (B) regulates behavior of a special trust employee toward a subordinate student;
- 328 (C) includes a prohibition against any sexual conduct between a special trust employee  
329 and a subordinate student; and
- 330 (D) includes a prohibition against a special trust employee and subordinate student  
331 sharing any sexually explicit or lewd communication, image, or photograph.
- 332 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
- 333 (iv) "Special trust employee" means an employee of a higher education institution who  
334 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education  
335 student.
- 336 (v) "Subordinate student" means a student:
- 337 (A) of a higher education institution; and

338 (B) whose educational opportunities could be adversely impacted by a special trust  
339 employee.

340 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
341 claim for an injury resulting from a sexual battery committed against a subordinate student by a  
342 special trust employee, unless:

343 (i) the institution proves that the special trust employee's behavior that otherwise would  
344 constitute a sexual battery was:

345 (A) with a subordinate student who was at least 18 years old at the time of the  
346 behavior; and

347 (B) with the student's consent; or

348 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
349 a policy governing behavior; and

350 (B) before the sexual battery occurred, the higher education institution had taken steps  
351 to implement and enforce the policy governing behavior.