

1 AN ACT relating to student discipline at public postsecondary education
2 institutions.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔Section 1. KRS 164.370 is amended to read as follows:

5 *(1) For the purposes of this section,*

6 *(a) "Complainant" means a student afforded rights in a specific student*
7 *disciplinary matter pursuant to Title IX or other federal law that would*
8 *grant that student the right to participate as an equal party in a student*
9 *disciplinary proceeding;*

10 *(b) "Participant" means a respondent and, if applicable to a specific*
11 *disciplinary proceeding, a complainant;*

12 *(c) "Respondent" means a student that has been formally accused of a*
13 *violation of the rules for student conduct promulgated by the governing*
14 *board of a public postsecondary education institution;*

15 *(d) "Student" has the same meaning as in KRS 164.348; and*

16 *(e) "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C.*
17 *secs. 1681 et seq., applicable federal regulations, and binding federal*
18 *judicial precedent.*

19 *(2) Each governing board shall adopt a code for student conduct that shall clearly set*
20 *forth the rules for student conduct and establish disciplinary procedures to*
21 *enforce those rules.*

22 *(3) At a minimum, the disciplinary procedures shall:*

23 *(a) 1. Afford a respondent the presumption that the respondent is innocent*
24 *and has not committed a violation of the rules for student conduct*
25 *until the institution has established every element of the alleged*
26 *violation; and*

27 *2. Clearly state that the presumption afforded by subparagraph 1. of this*

1 paragraph shall not be construed to mean that any witness has
2 presented false testimony or evidence, including but not limited to a
3 complainant;

4 (b) Provide a participant written notice of:

5 1. The specific details of an alleged violation or formal charge of a
6 violation;

7 2. The rights of the participant as set forth in this section, the code for
8 student conduct, or any other applicable law; and

9 3. The date, time, and location of each phase of the disciplinary process
10 at least:

11 a. Three (3) business days prior to any scheduled event at which the
12 participant is expected to appear, including any administrative
13 meeting that serves an investigative purpose; and

14 b. Ten (10) business days prior to any disciplinary hearing;

15 (c) 1. Require the institution to maintain a record of the disciplinary
16 proceedings that shall include all evidence in the institution's
17 possession or control relevant to the alleged violation or the
18 institution's investigation thereof, including exculpatory evidence, and
19 a video or audio recording of any disciplinary hearing;

20 2. Provide a participant reasonable and continuous access to the entire
21 record beginning at least ten (10) business days prior to any
22 disciplinary hearing, except that individual portions of the record may
23 be redacted if disclosure of the evidence is otherwise prohibited by
24 law; and

25 3. Require that only evidence contained in the record may be considered
26 in the determination of whether a violation occurred;

27 (d) Provide a participant the right to:

- 1 1. Be present and participate meaningfully in each phase of the
2 disciplinary process, except as restricted by Title IX; and
- 3 2. Fair and impartial treatment at each phase of the disciplinary process,
4 which shall exclude any individual that participates in an
5 investigation or alternative dispute resolution related to the matter
6 from participating as a hearing adjudicator; and
- 7 (e) If an alleged violation may result in the suspension, expulsion, or
8 termination of a respondent's residence in campus housing or termination
9 of the affiliation of a student organization registered pursuant to the
10 policies of the institution, provide a participant:
- 11 1. At the participant's own expense, the right to be represented by
12 counsel or, if required by Title IX, an adviser, at each material phase
13 of the disciplinary process, including but not limited to any alternative
14 dispute resolution phase, meeting, hearing, or appeal of the matter.
15 Upon written notification of representation, this right shall require an
16 institution to direct all correspondence related to the disciplinary
17 proceeding to the participant's counsel and to the participant; and
- 18 2. At any hearing, the right to:
- 19 a. Make opening and closing statements;
- 20 b. Present relevant evidence. Questions and evidence about the
21 complainant's sexual predisposition or prior sexual behavior are
22 not relevant, unless such questions and evidence about the
23 complainant's prior sexual behavior are offered to prove that
24 someone other than the respondent committed the conduct
25 alleged by the complainant, or if the questions and evidence
26 concern specific incidents of the complainant's prior sexual
27 behavior with respect to the respondent and are offered to prove

1 consent;

2 c. Cross-examine any testimony, personally or through counsel
 3 except personal cross-examination of a complainant shall be
 4 limited only as required by Title IX or other applicable federal
 5 law; and

6 d. Waive the confidentiality of the hearing to permit the attendance
 7 of any support person so long as that person would not interfere
 8 with the hearing, violate the privacy rights of another student, or
 9 substantially burden the hearing process.

10 (4) (a) Subject to subsection (3) of this section, a governing board~~Each board of~~
 11 ~~regents~~ may invest the faculty or a representative committee of designated
 12 faculty, staff, and students with the power to suspend or expel any student for
 13 disobedience to the~~its~~ rules~~,~~ for student conduct~~— or for any other~~
 14 ~~contumacy, insubordination or immoral conduct~~.

15 (b) In every disciplinary proceeding~~case of~~:

16 1. That, after a hearing on the matter, results in suspension or expulsion
 17 of a respondent~~student~~, termination of a respondent's residence in
 18 campus housing, or termination of the affiliation of a student
 19 organization registered pursuant to the policies of the institution; or

20 2. That arises from alleged violation of the institution's code for student
 21 conduct that would constitute sexual discrimination as defined by Title
 22 IX if proven;

23 the disciplinary procedures shall grant a participant the right to~~the person~~
 24 ~~suspended or expelled may~~ appeal to the governing board~~— of regents~~. The
 25 disciplinary procedures~~board of regents~~ shall prescribe the manner and the
 26 mode of procedure on appeal. The decision of the governing board~~— of~~
 27 ~~regents~~ shall be a final order.

1 (c) A participant shall have the right to appeal a final decision of the governing
 2 board in accordance with KRS 13B.140, except that a participant who has
 3 the final decision overturned for a violation of this section shall be entitled
 4 to compensatory damages, including attorney's fees and court costs, in an
 5 amount no less than the full cost of one (1) semester of a full-time, out-of-
 6 state tuition at the institution.

7 (5) Nothing in this section shall be interpreted to:

8 (a) Impede or delay law enforcement officials in investigating an alleged
 9 violation of local, state, or federal law;

10 (b) Impair an institution's ability to temporarily suspend a student during a
 11 timely investigation and adjudication of a disciplinary issue; and

12 (c) Limit any additional rights afforded to a student under federal law,
 13 including Title IX or the Jeanne Clery Disclosure of Campus Security
 14 Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. sec. 1092(f).

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
 16 READ AS FOLLOWS:

17 Each public postsecondary education institution shall electronically publish an annual
 18 report on student discipline to a prominent location on the institution's Web site by
 19 July 1 and shall submit the report to the Interim Joint Committee on Education within
 20 thirty (30) days of publishing each report. The annual report on student discipline shall
 21 include but is not limited to:

22 (1) The total number of disciplinary proceedings, including formal investigations,
 23 initiated by the institution for an alleged violation of the institution's code for
 24 student conduct, and of those, the total number and percentage of disciplinary
 25 proceedings that resulted in:

26 (a) A dismissal by the institution prior to a hearing on the matter;

27 (b) A negotiated resolution or agreement prior to a hearing on the matter;

- 1 (c) A hearing on the matter;
2 (d) Suspension of a student;
3 (e) Expulsion of a student;
4 (f) Termination of a student's residence in campus housing;
5 (g) Termination of the institution's affiliation with a student organization
6 registered pursuant to the rules of the institution;
7 (h) An appeal to the governing board of the institution in accordance with
8 subsection (4)(b) of Section 1 of this Act; and
9 (i) An appeal from a final decision of the governing board of the institution in
10 accordance with subsection (4)(c) of Section 1 of this Act; and
11 (2) Without providing any personally identifiable information, for each figure
12 required by subsection (1) of this section:
13 (a) A summary of the basic demographics of the students that were the subject
14 of the disciplinary proceedings included in that figure, including but not
15 limited to race, gender, approximate annual household income, residency
16 status, and approximate number of credit hours earned;
17 (b) The general nature or type of violation alleged; and
18 (c) The percentage of students that were the subject of the disciplinary
19 proceedings included in that figure that were represented by an attorney
20 licensed to practice law in Kentucky;

21 ➔Section 3. This Act may be cited as "The Kentucky Campus Due Process
22 Protection Act."