

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 who has formally filed a complaint*
7 *alleging that he or she is the victim of a violation of the rules of student*
8 *conduct promulgated by the governing body of a public postsecondary*
9 *education institution to address criminal conduct or other conduct that*
10 *would violate Title IX or other federal law if left unaddressed;*

11 *(b) "Participant" means a respondent and 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 pleadings and evidence in the
17 institution's possession or control relevant to the alleged violation or
18 the institution's investigation thereof, including exculpatory evidence,
19 and 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;
- 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 3. Waive the confidentiality of any phase in the disciplinary process to
8 permit the attendance of any support person so long as that person
9 would not violate the privacy rights of another student or substantially
10 delay the disciplinary process. If required by Title IX, the support
11 person may serve as an advisor to the participant; and
- 12 (e) If an alleged violation may result in the suspension, expulsion, or
13 termination of a respondent's residence in campus housing or termination
14 of the affiliation of a student organization registered pursuant to the
15 policies of the institution, provide a participant:
 - 16 1. At the participant's own expense, the right to be represented by
17 counsel or, if required by Title IX, an adviser, at each material phase
18 of the disciplinary process, including but not limited to any alternative
19 dispute resolution phase, meeting, hearing, or appeal of the matter.
20 Upon written notification of representation, this right shall require an
21 institution to direct all correspondence related to the disciplinary
22 proceeding to the participant's counsel and to the participant; and
 - 23 2. At any hearing, the right to:
 - 24 a. Make opening and closing statements;
 - 25 b. Present relevant evidence. Questions and evidence about the
26 complainant's sexual predisposition or prior sexual behavior are
27 not relevant, unless such questions and evidence about the

1 complainant's prior sexual behavior are offered to prove that
 2 someone other than the respondent committed the conduct
 3 alleged by the complainant, or if the questions and evidence
 4 concern specific incidents of the complainant's prior sexual
 5 behavior with respect to the respondent and are offered to prove
 6 consent; and

7 c. Cross-examine any testimony through counsel and, if the student
 8 is not represented by counsel, personally, except cross-
 9 examination of a student conducted by a participant personally
 10 shall require:

11 1. The participant to submit the questions in writing to a neutral hearing
 12 officer. The neutral hearing officer shall ask all relevant questions,
 13 state the specific rationale for excluding any question, and grant a
 14 participant the right to amend a question excluded to cure any
 15 objection thereto; and

16 2. Cross-examination to be restricted as required by Title IX or other
 17 applicable federal law.

18 (4) (a) Subject to subsection (3) of this section, a governing board~~Each board of~~
 19 ~~regents~~ may invest the faculty or a representative committee of designated
 20 faculty, staff, and students with the power to recommend suspension or
 21 expulsion of ~~[-suspend or expel]~~ any student for a violation of~~[-disobedienc~~
 22 ~~to]~~ the~~[-its]~~ rules~~[-]~~ for student conduct~~[- or for any other contumacy,~~
 23 ~~insubordination or immoral conduct].~~

24 (b) In every disciplinary proceeding~~[-case of]~~:

25 1. That, after a hearing on the matter, results in suspension or expulsion
 26 of a respondent~~[-student]~~, termination of a respondent's residence in
 27 campus housing, or termination of the affiliation of a student

1 organization registered pursuant to the policies of the institution; or
 2 2. That arises from alleged violation of the institution's code for student
 3 conduct that would constitute sexual discrimination as defined by Title
 4 IX;
 5 the disciplinary procedures shall grant a participant the right to~~[the person~~
 6 suspended or expelled may] appeal to the governing board or designee of the
 7 governing board~~[of regents]~~. The disciplinary procedures~~[board of regents]~~
 8 shall prescribe the manner and the mode of procedure on appeal. The decision
 9 of the governing board or its designee~~[of regents]~~ shall be a final order.

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

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

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

19 (b) Impair an institution's ability to take reasonable interim actions during a
 20 timely investigation and adjudication of a student disciplinary issue,
 21 including but not limited to the ability to make adjustments in student
 22 housing arrangements and to temporarily suspend a student;

23 (c) Impair an institution's ability to require one (1) or more complainants to
 24 serve as a representative of a class of student victims if:

25 1. The class is so numerous that joinder of all members is impracticable;

26 2. There are questions of law or fact common to the class;

27 3. The claims or defenses of the representatives are typical of the claims

- 1 or defenses of the class; and
- 2 4. The representative parties will fairly and adequately protect the
- 3 interests of the class; and
- 4 (d) Limit any additional rights afforded to a student under federal law,
- 5 including Title IX or the Jeanne Clery Disclosure of Campus Security
- 6 Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. sec. 1092(f).

7 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO

8 READ AS FOLLOWS:

9 Each public postsecondary education institution shall electronically publish an annual

10 report on student discipline to a prominent location on the institution's Web site by

11 July 1 and shall submit the report to the Interim Joint Committee on Education within

12 thirty (30) days of publishing each report. The annual report on student discipline shall

13 include but is not limited to:

14 (1) The total number of disciplinary proceedings, including formal investigations,

15 initiated by the institution for an alleged violation of the institution's code for

16 student conduct, and of those, the total number and percentage of disciplinary

17 proceedings that resulted in:

18 (a) A dismissal of the complaint by the institution prior to a hearing on the

19 matter;

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

21 (c) A hearing on the matter;

22 (d) Suspension of a student;

23 (e) Expulsion of a student;

24 (f) Termination of a student's residence in campus housing;

25 (g) Termination of the institution's affiliation with a student organization

26 registered pursuant to the rules of the institution;

27 (h) An appeal to the governing board or its designee of the institution in

- 1 accordance with subsection (4)(b) of Section 1 of this Act; and
- 2 (i) An appeal from a final decision of the governing board or its designee of
- 3 the institution in accordance with subsection (4)(c) of Section 1 of this Act;
- 4 and
- 5 (2) Without providing any personally identifiable information, for each figure
- 6 required by subsection (1) of this section:
- 7 (a) A summary of the basic demographics of the students that were the subject
- 8 of the disciplinary proceedings included in that figure, including but not
- 9 limited to race, gender, residency status, and approximate number of credit
- 10 hours earned;
- 11 (b) The general nature or type of violation alleged;
- 12 (c) The general source of the initial information underlying the alleged
- 13 violation, including but not limited to another student, faculty, staff,
- 14 community member, or law enforcement; and
- 15 (d) The percentage of students that were the subject of the disciplinary
- 16 proceedings included in that figure that were represented by an attorney
- 17 licensed to practice law in Kentucky.

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