

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 the student is the victim of a violation of the code for student*
8 *conduct promulgated by the governing body of an institution;*

9 *(b) "Institution" means the following public postsecondary education*
10 *institutions: University of Kentucky, University of Louisville, Eastern*
11 *Kentucky University, Kentucky State University, Morehead State University,*
12 *Murray State University, Northern Kentucky University, and Western*
13 *Kentucky University;*

14 *(c) "Governing board" means the Boards of Trustees or Boards of Regents of*
15 *an institution;*

16 *(d) "Participant" means a respondent or a complainant;*

17 *(e) "Respondent" means a student who has been formally accused of a*
18 *violation of the code for student conduct promulgated by the governing*
19 *board of an institution;*

20 *(f) "Student" has the same meaning as in KRS 164.348; and*

21 *(g) "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C.*
22 *sec. 1681 et seq., applicable federal regulations, and binding federal judicial*
23 *precedent.*

24 *(2) Each governing board shall adopt a code for student conduct that clearly sets*
25 *forth the rules for nonacademic student conduct and establishes disciplinary*
26 *procedures to enforce those rules. The disciplinary procedures shall set forth*
27 *rules for establishing the admissibility of evidence that are consistent with KRS*

1 13B.090, KRE 412, and Title IX.

2 (3) At a minimum, when a violation is punishable by a suspension or expulsion from
3 the institution or termination of a respondent's residence in campus housing, the
4 disciplinary procedures contained in the code for student conduct shall:

5 (a) 1. Afford a respondent the presumption that the respondent is innocent
6 and has not committed a violation of the code for student conduct
7 until the institution has established every element of the alleged
8 violation; and

9 2. Clearly state that the presumption afforded by subparagraph 1. of this
10 paragraph shall not be construed to mean that the complainant or any
11 witness has presented false testimony or evidence;

12 (b) Provide a participant written notice of:

13 1. A formal charge of an alleged violation and the specific details of the
14 facts upon which the alleged violation is based;

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

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

19 a. Three (3) business day prior to any scheduled event at which the
20 participant is expected to appear, including any meeting or
21 interview that serves an investigative purpose; and

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

23 (c) 1. Require the institution to maintain an administrative file of the
24 disciplinary proceedings. The file shall include all documents and
25 evidence in the institution's possession or control relevant to the
26 alleged violation and the institution's investigation thereof, including
27 but not limited to exculpatory evidence, documents submitted by any

- 1 participant, and the institution's choice of a video recording, an audio
2 recording, or a transcript of any disciplinary hearing ultimately held
3 in the matter but shall not include privileged documents or internal
4 memorandums that the institution does not intend to introduce as
5 evidence at any hearing on the matter;
- 6 2. Provide a participant reasonable continuing access to the
7 administrative file and the ability to make copies of all evidence or
8 document contained therein beginning at least seven (7) business days
9 prior to any disciplinary hearing, or sooner if otherwise specified
10 under federal law, except that individual portions of the administrative
11 file may be redacted if disclosure of the evidence is otherwise
12 prohibited by law;
- 13 3. Require that all documentary or tangible evidence that the institution
14 or a participant intends to introduce at a disciplinary hearing be
15 submitted to the administrative file at least three (3) business days
16 prior to the disciplinary hearing, or sooner if otherwise specified
17 under federal law. Any documentary or tangible evidence that is
18 submitted less than three (3) days prior to the disciplinary hearing
19 shall only be admissible upon the discretion of the hearing officer. An
20 institution shall immediately notify a participant when documents and
21 evidence are added to the administrative file within three (3) business
22 days of a disciplinary hearing;
- 23 4. Require that the institution and participants submit a list of all
24 witnesses the institution or participant expects to call at the
25 disciplinary hearing to the administrative file at least three (3)
26 business days prior to the hearing, or sooner if otherwise specified
27 under federal law. Additional witnesses submitted less than three (3)

1 business days prior to the disciplinary hearing shall only be permitted
2 upon the discretion of the hearing officer. An institution shall
3 immediately notify a participant when a witness is added to list of
4 institutional witnesses within three (3) business days of a disciplinary
5 hearing;

6 5. Require that only evidence contained in the administrative file that is
7 determined by the hearing officer to be relevant and admissible may be
8 considered in the determination of whether a violation occurred,
9 including but not limited to the audio recording, video recording, or
10 transcript of any disciplinary hearing ultimately held in the matter;
11 and

12 6. Unless otherwise specified under federal law, require that the
13 institution maintain the administrative file:

14 a. Permanently if a violation results in the expulsion of a student;
15 or

16 b. In all other matters, the later of either:

17 i. Three (3) years after the respondent's graduation or last
18 date of attendance; or

19 ii. Three (3) years after all sanctions have been met;

20 (d) Provide a participant the right to:

21 1. Be present and participate meaningfully at any disciplinary hearing,
22 interim measure hearing, or other scheduled event where the rights of
23 the respondent are to be determined, except as restricted by Title IX;

24 2. Fair and impartial treatment at each phase of the disciplinary process,
25 which shall exclude any individual that conducts an investigation or
26 presides over an alternative dispute resolution process related to the
27 matter from participating as a hearing adjudicator or on a hearing

1 tribunal; and

2 3. Provide a limited waiver of the confidentiality of any phase of the
3 disciplinary process to permit the attendance of up to two (2) support
4 persons so long as the support persons would not violate the privacy
5 rights of another student or substantially delay the disciplinary
6 process. A support person shall have no right to participate unless the
7 support person is attending as an advisor to the participant in
8 accordance with Title IX; and

9 (e) In addition to the rights set forth in paragraphs (a) to (d) of this subsection,
10 if an alleged violation is punishable by a final order of suspension of three
11 (3) or more days or expulsion from the institution or termination of a
12 respondent's residence in campus housing, provide a participant:

13 1. At the participant's own expense, the right to be represented by
14 counsel or, if required by Title IX, an advisor, at each material phase
15 of the disciplinary process, including but not limited to any alternative
16 dispute resolution phase, meeting, hearing, or appeal of the matter.
17 Upon written notification of representation, this right shall require an
18 institution to direct all correspondence related to the disciplinary
19 proceeding to both the participant's counsel or advisor and to the
20 participant; and

21 2. At any hearing, the right to:

22 a. Make opening and closing statements;

23 b. Present relevant evidence; and

24 c. Cross-examine any testimony personally or through counsel.
25 Cross-examination of a student who is a victim or the
26 complainant that is personally conducted by a respondent shall
27 require:

- 1 *i. The participant to submit the questions to a neutral*
 2 *hearing officer. The neutral hearing officer shall ask all*
 3 *relevant questions to the student witness during the live*
 4 *hearing, state the specific rationale for excluding any*
 5 *question, and grant a participant the right to amend a*
 6 *question that has been excluded in order to cure any*
 7 *objection thereto sustained by the hearing officer, and to*
 8 *submit follow up questions to the student witness; and*
 9 *ii. Cross-examination be restricted as required by Title IX or*
 10 *other applicable federal law.*

11 **(4) (a) Subject to subsection (3) of this section, a governing board**~~Each board of~~
 12 ~~regents~~ may invest the faculty, *administration*, or a representative committee
 13 of designated faculty, staff, and students with the power to suspend or expel
 14 any student *from the institution, or otherwise discipline a student*, for a
 15 *violation of*~~disobedience to~~ *its code for student conduct*~~[its rules, or for any~~
 16 ~~other contumacy, insubordination or immoral conduct]. [In every case of~~
 17 ~~suspension or expulsion of a student]~~

18 *(b) If, after a hearing on the matter, a violation results in a final order of*
 19 *suspension of a respondent for three (3) or more days or expulsion of a*
 20 *respondent from the institution or termination of a respondent's residence*
 21 *in campus housing, the disciplinary procedures shall grant the respondent*
 22 *the right to*~~the person suspended or expelled may~~ appeal to the *governing*
 23 board *or its designee*~~[of regents]~~. The *disciplinary procedures*~~[board of~~
 24 ~~regents]~~ shall prescribe the manner and the mode of procedure on appeal. The
 25 decision of the *governing* board *or its designee*~~[of regents]~~ shall be *a*
 26 *order.*

27 *(c) If, after a hearing on the matter, an allegation of conduct that constitutes*

1 sexual discrimination as defined by Title IX does not result in a finding of a
2 violation, the disciplinary procedures shall grant the complainant the right
3 to appeal to the governing board or its designee in the same manner as
4 prescribed to the respondent pursuant to paragraph (b) of this subsection.

5 (d) Notwithstanding KRS 13B.020(2)(i), a respondent, or a complainant as
6 required by Title IX, shall have the right to appeal a final order of the
7 governing board or its designee in accordance with KRS 13B.140, except
8 that a participant who has the final order overturned for a violation of this
9 section shall be entitled to actual damages from the institution, including
10 reasonable attorney's fees and court costs.

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

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

14 (b) Impair an institution's ability to take reasonable interim measures
15 necessary to ensure the physical safety of members of the campus
16 community during a timely investigation and adjudication of a student
17 disciplinary issue, including but not limited to the ability to make
18 adjustments in student housing arrangements, impose conditions of no-
19 contact between the respondent and complainant, temporarily suspend a
20 student, or ban a student from campus. Such reasonable interim measures
21 shall require:

22 1. Within twenty-four (24) hours, written notice of the interim measures
23 that explains the institution's reasons for enacting the interim
24 measures; and

25 2. Within three (3) business days of the written notice, unless otherwise
26 waived by the respondent, an interim measure hearing to determine
27 whether there is substantial evidence that the respondent poses a risk

1 to the physical safety of a member of the campus community and that
2 the interim measure is appropriate to mitigate that risk. At the interim
3 measure hearing, a respondent shall have the right to be represented
4 as set forth in subsection (3)(e)1. of this section. A respondent's waiver
5 of the right to an interim measure hearing shall not constitute an
6 admission of guilt or a waiver of any additional rights afforded under
7 Sections 1 and 2 of this Act;

8 (c) Impair an institution's duty or ability to implement any measure necessary
9 to effectuate a valid judicial order, including but not limited to termination
10 of a respondent's residence in campus housing. Notwithstanding paragraph
11 (b) of this subsection, measures necessary to effectuate a judicial order shall
12 not be subject to an interim measure hearing;

13 (d) Impair an institution's ability to terminate a student's residence in campus
14 housing for any reason other than a violation of the code for student
15 conduct, including but not limited to a breach of any housing contract
16 between the student and campus housing;

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

- 19 1. The class is so numerous that joinder of all members is impracticable;
- 20 2. There are questions of law or fact common to the class;
- 21 3. The claims or defenses of the representatives are typical of the claims
22 or defenses of the class; and
- 23 4. The representative parties will fairly and adequately protect the
24 interests of the class; and

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

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

3 *(1) By November 1, 2023, and by November 1 every five (5) years thereafter, each*
4 *institution, as defined in Section 1 of this Act, shall electronically publish a report*
5 *on student discipline to a prominent location on the institution's Web site. The*
6 *first report shall have a one (1) year reporting period and each report thereafter*
7 *shall have a five (5) year reporting period. Each report on student discipline shall*
8 *be submitted to the Interim Joint Committee on Education no later than*
9 *November 1 of the year the report is due to be published. The report on student*
10 *discipline shall include but is not limited to:*

11 *(a) Without providing any personally identifiable information, the total number*
12 *of disciplinary proceedings, including formal investigations, initiated by the*
13 *institution for an alleged violation of the institution's code for student*
14 *conduct during the reporting period, and of those, the total number and*
15 *percentage of disciplinary proceedings that resulted in:*

16 *1. A dismissal of the complaint by the institution prior to a hearing on*
17 *the matter;*

18 *2. A negotiated resolution or agreement prior to a hearing on the matter;*

19 *3. A hearing on the matter;*

20 *4. A dismissal of the complaint by the institution after a hearing on the*
21 *matter;*

22 *5. Suspension of a student;*

23 *6. Expulsion of a student;*

24 *7. Termination of a student's residence in campus housing;*

25 *8. An appeal to the governing board or its designee of the institution in*
26 *accordance with subsection (4)(b) of Section 1 of this Act; and*

27 *9. An appeal from a final decision of the governing board or its designee*

1 of the institution in accordance with subsection (4)(c) of Section 1 of
2 this Act; and

3 (b) Without providing any personally identifiable information, for each data
4 point required by paragraph (a) of this subsection:

5 1. A summary of the basic demographics of the students that were the
6 subject of the disciplinary proceedings included in that figure,
7 including but not limited to race, gender, whether the student resided
8 in campus housing at the time the violation allegedly occurred, and
9 the approximate number of credit hours earned;

10 2. The specific rule in the code for student conduct alleged to have been
11 violated;

12 3. 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 4. The percentage of students that were the subject of the disciplinary
16 proceedings included in that figure that were represented by an
17 attorney licensed to practice law in Kentucky.

18 (2) (a) If a public postsecondary education institution believes, due to federal law,
19 that any specific data point required by paragraphs (a) and (b) of subsection
20 (1) of this section cannot be adequately deidentified for public reporting, the
21 institution shall submit a request for an exemption to the reporting
22 requirement established in subsection (1) of this section for each specific
23 data point to the Attorney General. The Attorney General shall review the
24 request for exemption to determine whether each data point submitted can
25 be adequately deidentified.

26 (b) A request for exemption shall be submitted no later than September 1 of the
27 year the report is due to be published. The Attorney General shall make all

1 reasonable efforts to grant or deny any request for exemption within sixty
 2 (60) days of receipt.

3 (c) 1. If the request for an exemption is granted, the report on student
 4 discipline published by the institution shall clearly identify each
 5 specific data point excluded pursuant to the exemption; and

6 2. If an institution fails to submit a timely request for exemption, the
 7 Attorney General fails to grant or deny a timely filed request for
 8 exemption in the sixty (60) day time frame, or the request for
 9 exemption is denied and the institution continues to believe that a
 10 specific data point cannot be adequately deidentified, the institution
 11 shall:

12 a. In the report on student discipline published by the institution,
 13 clearly identify each specific data point excluded pursuant to the
 14 institution's objection that is not substantiated pursuant to an
 15 exemption from the Attorney General; and

16 b. Submit a confidential, supplemental report to the Interim Joint
 17 Committee on Education by December 1 each year the report on
 18 student discipline is due. The supplemental report shall identify
 19 each data point the institution believes cannot be adequately
 20 deidentified and clearly set forth the reasoning for the
 21 institution's position. The committee may consider each
 22 supplemental report as it determines and in its discretion. Each
 23 supplemental report, and the consideration thereof by the
 24 committee, shall be exempt from the open records and open
 25 meetings requirements contained in KRS Chapter 61.

26 ➔Section 3. This Act may be cited as the Kentucky Campus Due Process
 27 Protection Act.