

CHAPTER 159

(HB 290)

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

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

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

- (1) *For the purposes of this section,*
- (a) *"Complainant" means a student who has formally filed a complaint alleging that the student is the victim of a violation of the code for student conduct promulgated by the governing body of an institution;*
 - (b) *"Institution" means the following public postsecondary education institutions: University of Kentucky, University of Louisville, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, and Western Kentucky University;*
 - (c) *"Governing board" means the Boards of Trustees or Boards of Regents of an institution;*
 - (d) *"Participant" means a respondent or a complainant;*
 - (e) *"Respondent" means a student who has been formally accused of a violation of the code for student conduct promulgated by the governing board of an institution;*
 - (f) *"Student" has the same meaning as in KRS 164.348; and*
 - (g) *"Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C. sec. 1681 et seq., applicable federal regulations, and binding federal judicial precedent.*
- (2) *Each governing board shall adopt a code for student conduct that clearly sets forth the rules for nonacademic student conduct and establishes disciplinary procedures to enforce those rules. The disciplinary procedures shall set forth rules for establishing the admissibility of evidence that are consistent with KRS 13B.090, KRE 412, and Title IX.*
- (3) *At a minimum, when a violation is punishable by a suspension or expulsion from the institution or termination of a respondent's residence in campus housing, the disciplinary procedures contained in the code for student conduct shall:*
- (a)
 1. *Afford a respondent the presumption that the respondent is innocent and has not committed a violation of the code for student conduct until the institution has established every element of the alleged violation; and*
 2. *Clearly state that the presumption afforded by subparagraph 1. of this paragraph shall not be construed to mean that the complainant or any witness has presented false testimony or evidence;*
 - (b) *Provide a participant written notice of:*
 1. *A formal charge of an alleged violation and the specific details of the facts upon which the alleged violation is based;*
 2. *The rights of the participant as set forth in this section, the code for student conduct, and any other applicable law; and*
 3. *The date, time, and location of each phase of the disciplinary process at least:*
 - a. *Three (3) business day prior to any scheduled event at which the participant is expected to appear, including any meeting or interview that serves an investigative purpose; and*
 - b. *Ten (10) business days prior to any disciplinary hearing;*
 - (c)
 1. *Require the institution to maintain an administrative file of the disciplinary proceedings. The file shall include all documents and evidence in the institution's possession or control relevant to the alleged violation and the institution's investigation thereof, including but not limited to*

exculpatory evidence, documents submitted by any participant, and the institution's choice of a video recording, an audio recording, or a transcript of any disciplinary hearing ultimately held in the matter but shall not include privileged documents or internal memorandums that the institution does not intend to introduce as evidence at any hearing on the matter;

2. *Provide a participant reasonable continuing access to the administrative file and the ability to make copies of all evidence or document contained therein beginning at least seven (7) business days prior to any disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of the administrative file may be redacted if disclosure of the evidence is otherwise prohibited by law;*
 3. *Require that all documentary or tangible evidence that the institution or a participant intends to introduce at a disciplinary hearing be submitted to the administrative file at least three (3) business days prior to the disciplinary hearing, or sooner if otherwise specified under federal law. Any documentary or tangible evidence that is submitted less than three (3) days prior to the disciplinary hearing shall only be admissible upon the discretion of the hearing officer. An institution shall immediately notify a participant when documents and evidence are added to the administrative file within three (3) business days of a disciplinary hearing;*
 4. *Require that the institution and participants submit a list of all witnesses the institution or participant expects to call at the disciplinary hearing to the administrative file at least three (3) business days prior to the hearing, or sooner if otherwise specified under federal law. Additional witnesses submitted less than three (3) business days prior to the disciplinary hearing shall only be permitted upon the discretion of the hearing officer. An institution shall immediately notify a participant when a witness is added to list of institutional witnesses within three (3) business days of a disciplinary hearing;*
 5. *Require that only evidence contained in the administrative file that is determined by the hearing officer to be relevant and admissible may be considered in the determination of whether a violation occurred, including but not limited to the audio recording, video recording, or transcript of any disciplinary hearing ultimately held in the matter; and*
 6. *Unless otherwise specified under federal law, require that the institution maintain the administrative file:*
 - a. *Permanently if a violation results in the expulsion of a student; or*
 - b. *In all other matters, the later of either:*
 - i. *Three (3) years after the respondent's graduation or last date of attendance; or*
 - ii. *Three (3) years after all sanctions have been met;*
- (d) *Provide a participant the right to:*
1. *Be present and participate meaningfully at any disciplinary hearing, interim measure hearing, or other scheduled event where the rights of the respondent are to be determined, except as restricted by Title IX;*
 2. *Fair and impartial treatment at each phase of the disciplinary process, which shall exclude any individual that conducts an investigation or presides over an alternative dispute resolution process related to the matter from participating as a hearing adjudicator or on a hearing tribunal; and*
 3. *Provide a limited waiver of the confidentiality of any phase of the disciplinary process to permit the attendance of up to two (2) support persons so long as the support persons would not violate the privacy rights of another student or substantially delay the disciplinary process. A support person shall have no right to participate unless the support person is attending as an advisor to the participant in accordance with Title IX; and*
- (e) *In addition to the rights set forth in paragraphs (a) to (d) of this subsection, if an alleged violation is punishable by a final order of suspension of three (3) or more days or expulsion from the institution or termination of a respondent's residence in campus housing, provide a participant:*
1. *At the participant's own expense, the right to be represented by counsel or, if required by Title IX, an advisor, at each material phase of the disciplinary process, including but not limited to*

any alternative dispute resolution phase, meeting, hearing, or appeal of the matter. Upon written notification of representation, this right shall require an institution to direct all correspondence related to the disciplinary proceeding to both the participant's counsel or advisor and to the participant; and

2. *At any hearing, the right to:*
 - a. *Make opening and closing statements;*
 - b. *Present relevant evidence; and*
 - c. *Cross-examine any testimony personally or through counsel. Cross-examination of a student who is a victim or the complainant that is personally conducted by a respondent shall require:*
 - i. *The participant to submit the questions to a neutral hearing officer. The neutral hearing officer shall ask all relevant questions to the student witness during the live hearing, state the specific rationale for excluding any question, and grant a participant the right to amend a question that has been excluded in order to cure any objection thereto sustained by the hearing officer, and to submit follow up questions to the student witness; and*
 - ii. *Cross-examination be restricted as required by Title IX or other applicable federal law.*
- (4) (a) *Subject to subsection (3) of this section, a governing board~~[Each board of regents]~~ may invest the faculty, **administration**, or a representative committee of designated faculty, staff, and students with the power to suspend or expel any student *from the institution, or otherwise discipline a student, for a violation of~~[disobedience to] its code for student conduct~~[its rules, or for any other contumacy, insubordination or immoral conduct].* ~~[In every case of suspension or expulsion of a student]~~*
 - (b) *If, after a hearing on the matter, a violation results in a final order of suspension of a respondent for three (3) or more days or expulsion of a respondent from the institution or termination of a respondent's residence in campus housing, the disciplinary procedures shall grant the respondent the right to~~[the person suspended or expelled may]~~ appeal to the governing board or its designee~~[of regents]~~. The disciplinary procedures~~[board of regents]~~ shall prescribe the manner and the mode of procedure on appeal. The decision of the governing board or its designee~~[of regents]~~ shall be a final order.*
 - (c) *If, after a hearing on the matter, an allegation of conduct that constitutes sexual discrimination as defined by Title IX does not result in a finding of a violation, the disciplinary procedures shall grant the complainant the right to appeal to the governing board or its designee in the same manner as prescribed to the respondent pursuant to paragraph (b) of this subsection.*
 - (d) *Notwithstanding KRS 13B.020(2)(i), a respondent, or a complainant as required by Title IX, shall have the right to appeal a final order of the governing board or its designee in accordance with KRS 13B.140, except that a participant who has the final order overturned for a violation of this section shall be entitled to actual damages from the institution, including reasonable attorney's fees and court costs.*
- (5) *Nothing in this section shall be interpreted to:*
 - (a) *Impede or delay law enforcement officials in investigating an alleged violation of local, state, or federal law;*
 - (b) *Impair an institution's ability to take reasonable interim measures necessary to ensure the physical safety of members of the campus community during a timely investigation and adjudication of a student disciplinary issue, including but not limited to the ability to make adjustments in student housing arrangements, impose conditions of no-contact between the respondent and complainant, temporarily suspend a student, or ban a student from campus. Such reasonable interim measures shall require:*
 1. *Within twenty-four (24) hours, written notice of the interim measures that explains the institution's reasons for enacting the interim measures; and*

2. *Within three (3) business days of the written notice, unless otherwise waived by the respondent, an interim measure hearing to determine whether there is substantial evidence that the respondent poses a risk to the physical safety of a member of the campus community and that the interim measure is appropriate to mitigate that risk. At the interim measure hearing, a respondent shall have the right to be represented as set forth in subsection (3)(e)1. of this section. A respondent's waiver of the right to an interim measure hearing shall not constitute an admission of guilt or a waiver of any additional rights afforded under Sections 1 and 2 of this Act;*
- (c) *Impair an institution's duty or ability to implement any measure necessary to effectuate a valid judicial order, including but not limited to termination of a respondent's residence in campus housing. Notwithstanding paragraph (b) of this subsection, measures necessary to effectuate a judicial order shall not be subject to an interim measure hearing;*
- (d) *Impair an institution's ability to terminate a student's residence in campus housing for any reason other than a violation of the code for student conduct, including but not limited to a breach of any housing contract between the student and campus housing;*
- (e) *Impair an institution's ability to require one (1) or more complainants to serve as a representative of a class of student victims if:*
 1. *The class is so numerous that joinder of all members is impracticable;*
 2. *There are questions of law or fact common to the class;*
 3. *The claims or defenses of the representatives are typical of the claims or defenses of the class; and*
 4. *The representative parties will fairly and adequately protect the interests of the class; and*
- (f) *Limit any additional rights afforded to a student under federal law, including Title IX or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. sec. 1092(f).*

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

- (1) *By November 1, 2023, and by November 1 every five (5) years thereafter, each institution, as defined in Section 1 of this Act, shall electronically publish a report on student discipline to a prominent location on the institution's Web site. The first report shall have a one (1) year reporting period and each report thereafter shall have a five (5) year reporting period. Each report on student discipline shall be submitted to the Interim Joint Committee on Education no later than November 1 of the year the report is due to be published. The report on student discipline shall include but is not limited to:*
 - (a) *Without providing any personally identifiable information, the total number of disciplinary proceedings, including formal investigations, initiated by the institution for an alleged violation of the institution's code for student conduct during the reporting period, and of those, the total number and percentage of disciplinary proceedings that resulted in:*
 1. *A dismissal of the complaint by the institution prior to a hearing on the matter;*
 2. *A negotiated resolution or agreement prior to a hearing on the matter;*
 3. *A hearing on the matter;*
 4. *A dismissal of the complaint by the institution after a hearing on the matter;*
 5. *Suspension of a student;*
 6. *Expulsion of a student;*
 7. *Termination of a student's residence in campus housing;*
 8. *An appeal to the governing board or its designee of the institution in accordance with subsection (4)(b) of Section 1 of this Act; and*
 9. *An appeal from a final decision of the governing board or its designee of the institution in accordance with subsection (4)(c) of Section 1 of this Act; and*

- (b) *Without providing any personally identifiable information, for each data point required by paragraph (a) of this subsection:*
1. *A summary of the basic demographics of the students that were the subject of the disciplinary proceedings included in that figure, including but not limited to race, gender, whether the student resided in campus housing at the time the violation allegedly occurred, and the approximate number of credit hours earned;*
 2. *The specific rule in the code for student conduct alleged to have been violated;*
 3. *The general source of the initial information underlying the alleged violation, including but not limited to another student, faculty, staff, community member, or law enforcement; and*
 4. *The percentage of students that were the subject of the disciplinary proceedings included in that figure that were represented by an attorney licensed to practice law in Kentucky.*
- (2) (a) *If a public postsecondary education institution believes, due to federal law, that any specific data point required by paragraphs (a) and (b) of subsection (1) of this section cannot be adequately deidentified for public reporting, the institution shall submit a request for an exemption to the reporting requirement established in subsection (1) of this section for each specific data point to the Attorney General. The Attorney General shall review the request for exemption to determine whether each data point submitted can be adequately deidentified.*
- (b) *A request for exemption shall be submitted no later than September 1 of the year the report is due to be published. The Attorney General shall make all reasonable efforts to grant or deny any request for exemption within sixty (60) days of receipt.*
- (c) 1. *If the request for an exemption is granted, the report on student discipline published by the institution shall clearly identify each specific data point excluded pursuant to the exemption; and*
2. *If an institution fails to submit a timely request for exemption, the Attorney General fails to grant or deny a timely filed request for exemption in the sixty (60) day time frame, or the request for exemption is denied and the institution continues to believe that a specific data point cannot be adequately deidentified, the institution shall:*
- a. *In the report on student discipline published by the institution, clearly identify each specific data point excluded pursuant to the institution's objection that is not substantiated pursuant to an exemption from the Attorney General; and*
 - b. *Submit a confidential, supplemental report to the Interim Joint Committee on Education by December 1 each year the report on student discipline is due. The supplemental report shall identify each data point the institution believes cannot be adequately deidentified and clearly set forth the reasoning for the institution's position. The committee may consider each supplemental report as it determines and in its discretion. Each supplemental report, and the consideration thereof by the committee, shall be exempt from the open records and open meetings requirements contained in KRS Chapter 61.*

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

Signed by Governor April 8, 2022.