

2022 Regular Session

HOUSE BILL NO. 364

BY REPRESENTATIVES MCKNIGHT, AMEDEE, BISHOP, COUSSAN, DAVIS, IVEY,
LACOMBE, CHARLES OWEN, AND PRESSLY

1 AN ACT

2 To enact R.S. 17:3394, relative to the powers and duties of public postsecondary education
3 management boards; to require a disciplinary hearing process for students and
4 student organizations accused of committing non-academic offenses; and to provide
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. This Act shall be known and may be cited as the "Student Due Process
8 and Protection Act".

9 Section 2. R.S. 17:3394 is hereby enacted to read as follows:

10 §3394. Disciplinary proceedings

11 A. Each public postsecondary education management board shall adopt a
12 policy relative to disciplinary proceedings, right to counsel for students and student
13 organizations, and appeals. Each postsecondary institution governed by such a board
14 shall also adopt a policy and incorporate it into its student handbook or code of
15 conduct.

16 B. Any student enrolled at an institution under the jurisdiction of the
17 management board and accused of a violation of the disciplinary or conduct rules
18 that carries a potential penalty of suspension of ten or more days, deferred
19 suspension, or expulsion has the right to be represented, at the student's expense, by
20 an attorney or a non-attorney advocate who may fully participate during any
21 disciplinary proceeding or during any other procedure adopted and used by that

1 institution to address an alleged violation of the institution's non-academic rules or
2 policies. This right applies to both the student who has been accused of the violation
3 and to the student who is the alleged victim, if applicable. Prior to scheduling a
4 disciplinary proceeding, the institution shall inform the students in writing of their
5 rights as provided by this Section.

6 C. Any student organization officially recognized by an institution under the
7 jurisdiction of the management board has the right to be represented, at the
8 organization's expense, by an attorney or a non-attorney advocate who may fully
9 participate during any disciplinary proceeding or during any other procedure adopted
10 and used by the institution to address an alleged violation of the institution's non-
11 academic rules or policies. This right applies to both the student organization that
12 has been accused of the alleged violation and the alleged victim, if applicable.

13 D. A student or student organization subject to a charge or disciplinary
14 proceeding by the institution is entitled, upon receiving notice of the charge, to
15 notice of any and all violations of the institution's non-academic rules or policies and
16 the disciplinary proceedings or charges that will occur as a result. This notice shall
17 include but need not be limited to each and every section of the institution's rules or
18 policies that the student or student organization is alleged to have violated and any
19 evidence the institution used and collected in making the charge.

20 E. When a violation is punishable by suspension of ten or more days or
21 expulsion, or when a violation by a student organization is punishable by suspension
22 or removal of the organization from the institution, the disciplinary procedures
23 contained in the code of student conduct shall include but need not be limited to the
24 following:

25 (1) Afford the accused student or organization the express presumption of
26 innocence and set forth that he or the organization may not be deemed guilty of the
27 violation until he or the organization formally acknowledges responsibility or the
28 conclusion of a hearing where the institution has established every element of the
29 alleged violation.

1 (2) Require the institution to maintain an administrative file of the
2 disciplinary proceedings. The file shall include all documents and evidence in the
3 institution's possession or control relevant to the alleged violation and the
4 institution's investigation including but not limited to exculpatory evidence,
5 documents submitted by any participant, and the institution's choice of a video
6 recording, audio recording, or transcript of any disciplinary hearing ultimately held
7 in the matter. The file shall not include privileged documents or internal
8 memorandums that the institution does not intend to introduce as evidence at any
9 hearing on the matter.

10 (3) Provide both the accused student or organization and the alleged victim
11 reasonable continuing access to the administrative file and the ability to make copies
12 of all evidence or documents in the file beginning at least seven business days prior
13 to any disciplinary hearing, or sooner if otherwise specified under federal law, except
14 that individual portions of the administrative file shall be redacted if disclosure of the
15 evidence is required by law.

16 (4) Ensure that all disciplinary proceedings are carried out free from
17 conflicts of interest by ensuring that there is no commingling of administrative or
18 adjudicative roles. For purposes of this Paragraph, an institution shall be considered
19 to commingle such roles if any individual carries out more than one of the following
20 roles with respect to any disciplinary proceeding:

21 (a) Victim counselor and victim advocate.

22 (b) Investigator.

23 (c) Institutional prosecutor.

24 (d) Adjudicator.

25 (e) Appellate adjudicator.

26 F.(1) Any student or student organization that is found to be in violation of
27 the institution's non-academic rules or policies shall be afforded an opportunity to
28 appeal the institution's initial decision to an appellate entity that is an institutional
29 administrator or body that did not make the initial decision. Such an appeal shall be
30 filed within ten days after receiving final notice of the institution's decision. The

1 right to appeal the result of the institution's disciplinary proceeding also applies to
2 the student who is the alleged victim, if applicable. The institution may designate the
3 appellate entity as the final institutional authority on the matter; however nothing in
4 this Section shall preclude a court from granting a prevailing plaintiff equitable
5 relief.

6 (2) The right of the student or student organization as provided in
7 Subsections A and B of this Section to be represented, at the student's or the
8 organization's expense, by the student's or the organization's attorney or non-attorney
9 advocate also applies to the appeal.

10 (3) The issues that may be raised on appeal include new evidence,
11 contradictory evidence, and evidence that the student or student organization was not
12 afforded due process. The institutional body considering the appeal may consider
13 police reports, transcripts, and the outcome of any civil or criminal proceeding
14 directly related to the appeal.

15 G. Upon consideration of the evidence, the institutional body considering the
16 appeal may grant the appeal, deny the appeal, order a new hearing, or reduce or
17 modify the punishment. If the appeal results in the reversal of the decision or a
18 lessening of the sanction, the institution shall reimburse the student for any tuition
19 and fees paid for the period of suspension, including a deferred suspension, or
20 expulsion which had not been previously refunded, if applicable.

21 H. For purposes of this Section, "fully participate" includes the opportunity
22 to make opening and closing statements, to examine and cross-examine witnesses,
23 and to provide the alleged victim or accused with support, guidance, and advice. This
24 Section does not require an institution to use formal rules of evidence in institutional
25 disciplinary proceedings. The institution, however, shall make good faith efforts to
26 include relevant evidence and exclude evidence which is neither relevant nor
27 probative.

28 I. This Section does not affect the obligation of an institution to provide
29 equivalent rights to a student who is the alleged victim in the disciplinary

1 proceeding, including equivalent opportunities to have others present during an
2 institutional disciplinary proceeding, to an unrestricted choice of attorney or non-
3 attorney advocate in any meeting or institutional disciplinary proceeding, and to be
4 provided simultaneous notification of the institution's procedures for the accused and
5 the alleged victim to appeal the result of the institutional disciplinary proceeding, if
6 applicable.

7 J. Any student or student organization that has its rights under this Section
8 violated may bring a private right of action against the institution and its agents
9 acting in their official capacities, with the management board named as a party, to
10 recover actual damages. If the court finds this Section or the student or student
11 organization's rights to due process have been violated, the court shall award any
12 mental or emotional distress, loss of wages or earning capacity, and costs.

13 K. Nothing in this Section shall be construed to impair an institution's ability
14 to take reasonable interim measures necessary to ensure the physical safety of
15 members of the campus community during a timely investigation and adjudication
16 of a student disciplinary issue including but not limited to the ability to make
17 adjustments in student housing arrangements, impose conditions of mutual no-
18 contact between the accused student and the alleged victim, temporarily suspend a
19 student, or ban a student from campus. Such reasonable interim measures shall
20 require the following:

21 (1) Within seventy-two hours of the alleged violation being deemed an
22 immediate threat, written notice of the interim measure that explains the institution's
23 reasons for enacting the measures.

24 (2) Within seven business days of the written notice pursuant to Paragraph
25 (1) of this Subsection, unless otherwise waived by the accused student, an interim
26 measure hearing to determine whether there is substantial evidence that the student
27 poses a risk to the physical safety of a member of the campus community and that
28 the interim measure is appropriate to mitigate that risk. At the hearing, both the
29 accused student and the alleged victim shall have the right to be represented as

1 provided in Subsection B of this Section. An accused student's waiver of the right
2 to an interim measure hearing shall not constitute an admission of guilt or a waiver
3 of any additional rights provided for in this Section.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____