

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1014

By: Stanislawski

AS INTRODUCED

An Act relating to higher education; creating the Campus Individual Rights Act; providing short title; providing certain construction; providing definitions; prohibiting an institution from not allowing certain students, student organizations and alleged victims to be represented by legal representation; prohibiting an institution from not allowing certain legal representation to fully participate in certain proceeding; directing institutions of higher education to ensure access to certain evidence; providing certain construction; directing institutions of higher education to prohibit certain individuals from acting in certain capacities; directing institutions of higher education to enact certain policies; allowing institutions of higher education to adopt certain policy regarding submission of certain questions; allowing a cause of action to be brought; providing for award of damages and certain fees subject to certain limits; providing time limit for bringing a cause of action; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3231 of Title 70, unless there is created a duplication in numbering, reads as follows:

1 A. This act shall be known and may be cited as the "Campus
2 Individual Rights Act".

3 B. The provisions of this act shall not be construed to:

4 1. Govern campus law enforcement departments or law enforcement
5 personnel; or

6 2. Otherwise replace or amend criminal procedures that govern
7 law enforcement activities.

8 C. As used in this act:

9 1. "Academic dishonesty" means an act of dishonesty relating to
10 a student's academic work or performance;

11 2. "Accused student" means an individual enrolled in an
12 institution within The Oklahoma State System of Higher Education who
13 has allegedly violated a policy or rule;

14 3. "Accused student organization" means a student organization
15 that has allegedly violated a policy or rule;

16 4. "Alleged victim" means an individual whose rights are
17 allegedly infringed or who is otherwise allegedly harmed by an
18 accused student's or student organization's violation of a policy or
19 rule;

20 5. "Evidence" means information that is inculpatory or
21 exculpatory as it relates to an accusation against an accused
22 student or accused student organization, including:

23 a. a complainant statement,

24 b. a third-party witness statement,

- c. electronically-stored information,
- d. a written communication,
- e. a post to social media, or
- f. demonstrative evidence;

6. "Full participation" means the opportunity in a student or student organization disciplinary proceeding to:

- a. make opening and closing statements,
- b. examine and cross-examine a witness statement,
- c. provide support, guidance or advice to an accused student, accused student organization or alleged victim, and
- d. be informed that he or she has the right to record the proceedings;

7. "Institution" means an institution within The Oklahoma State System of Higher Education;

8. "Legal representation" means an attorney or, at a person's sole discretion, a nonattorney advocate;

9. "Policy or rule" means a policy or rule of an institution that, if violated, may result:

- a. for a student, in suspension of ten (10) calendar days or more or expulsion from the institution, or
- b. for a student organization, in the suspension or the removal of institutional recognition of the student organization;

1 10. "Proceeding" means an adjudicatory meeting, whether formal
2 or informal, including an appeal that is:

- 3 a. required by a policy or rule, or
- 4 b. held to determine whether a policy or rule has been
- 5 violated.

6 "Proceeding" does not mean an adjudicatory meeting, formal or
7 informal, held in court;

8 11. "Student disciplinary proceeding" means a proceeding
9 initiated by an institution to determine whether an accused student
10 has violated a policy or rule. "Student disciplinary proceeding"
11 does not mean a proceeding that solely involves a student's academic
12 dishonesty;

13 12. "Student organization" means a club or other organization
14 that:

- 15 a. meets during noninstructional time,
- 16 b. is recognized by the institution at which the
- 17 organization meets, and
- 18 c. the majority of whose members are current students at
- 19 the institution; and

20 13. "Student organization disciplinary proceeding" means a
21 proceeding initiated by an institution to determine whether an
22 accused student organization has violated a rule or policy.
23 "Student organization disciplinary proceeding" does not mean a
24 proceeding that solely involves a student's academic dishonesty.

1 D. With regard to student disciplinary proceedings, an
2 institution shall not prohibit:

3 1. An accused student from being represented, at the accused's
4 expense, by legal representation at a student disciplinary
5 proceeding that pertains to the accused student;

6 2. An accused student's legal representation from full
7 participation in a student disciplinary proceeding that pertains to
8 the accused student;

9 3. An alleged victim from being represented, at the alleged
10 victim's expense, by legal representation at a student disciplinary
11 proceeding that pertains to the alleged victim; or

12 4. The alleged victim's legal representation from full
13 participation in a student disciplinary proceeding that pertains to
14 the alleged victim.

15 E. An institution shall provide an accused student or an
16 alleged victim written notice of the accused student's or alleged
17 victim's rights under this section. Unless there are exigent
18 circumstances that reasonably justify proceeding without providing
19 notice as required by this subsection, an institution shall
20 establish policies and procedures to ensure that the institution
21 provides written notice of the accused student's or alleged victim's
22 rights as soon as practicable, but no later than seven (7) days
23 before a student disciplinary proceeding that pertains to the
24 accused student or alleged victim.

1 F. With regard to student organization disciplinary
2 proceedings, an institution shall not prohibit:

3 1. An accused student organization from being represented, at
4 the student organization's expense, by legal representation at a
5 student organization disciplinary proceeding that pertains to the
6 accused student organization;

7 2. An accused student organization's legal representation from
8 full participation in a student organization disciplinary proceeding
9 that pertains to the accused student organization;

10 3. An alleged victim from being represented, at the alleged
11 victim's expense, by legal representation at a student organization
12 disciplinary proceeding that pertains to the alleged victim; or

13 4. The alleged victim's legal representation from full
14 participation in a student organization disciplinary proceeding that
15 pertains to the alleged victim.

16 G. An institution shall provide an accused student organization
17 or an alleged victim described in subsection F of this section
18 written notice of the accused student organization's or alleged
19 victim's rights under this section. Unless there are exigent
20 circumstances that reasonably justify proceeding without providing
21 notice as required by this subsection, an institution shall
22 establish policies and procedures to ensure that the institution
23 provides written notice of the accused student organization's or
24 alleged victim's rights as soon as practicable, but no later than

1 seven (7) days before a student organization disciplinary proceeding
2 that pertains to the accused student organization or alleged.

3 H. An institution shall ensure that an accused student and an
4 alleged victim have access to all material evidence that is in the
5 institution's possession, including both inculpatory and exculpatory
6 evidence, not later than one week before the start of a proceeding.

7 Nothing in this subsection may be interpreted to:

8 1. Provide for formal or informal discovery beyond the exchange
9 of evidence described in this subsection;

10 2. Incorporate or bind an institution to the Oklahoma Rules of
11 Civil Procedure or the rules of evidence of the courts of Oklahoma;
12 or

13 3. Incorporate or bind an institution to the Federal Rules of
14 Civil Procedure or the Federal Rules of Evidence.

15 I. 1. Except as provided in paragraph 2 of this subsection, an
16 institution shall prohibit an individual employed by or otherwise
17 representing an institution from acting as an adjudicator, hearing
18 officer or appellate hearing officer if the individual has also
19 served in one of the following roles for purposes of a student
20 disciplinary proceeding or student organization disciplinary
21 proceeding:

22 a. an advocate or counselor for an alleged victim,
23 accused student or accused student organization,

24 b. an investigator,

1 c. an institutional prosecutor, or

2 d. an advisor to a person described in subparagraphs a
3 through c of this paragraph.

4 2. If an individual employed by the institution or otherwise
5 representing the institution serves as an investigator at an
6 institutional prosecutor for the alleged violation of a policy or
7 rule, the institution shall advise an accused student, accused
8 student organization or alleged victim before the investigation
9 proceeding.

10 3. An individual may not serve as an investigator or
11 institutional prosecutor and an advocate for an accused student,
12 accused student organization or alleged victim.

13 J. 1. Nothing in this subsection shall be construed to
14 prohibit an institution from temporarily suspending an accused
15 student or accused student organization pending the completion of a
16 student or student organization disciplinary proceeding.

17 2. An institution shall enact policies to govern proceedings in
18 which a student has a right to active counsel in accordance with
19 this act.

20 3. An institution may adopt a policy requiring the attorney or
21 advocate of an accused student, accused student organization or
22 alleged victim to submit questions for an opposing party first to a
23 hearing officer, provided that the hearing officer shall only
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1 exclude questions that in the hearing officer's good faith
2 interpretation are irrelevant or unduly prejudicial.

3 4. A hearing officer shall place the hearing officer's
4 rationale for excluding a question on the record for appellate
5 review.

6 K. 1. An accused student, accused student organization or
7 alleged victim may bring an action in a court of competent
8 jurisdiction for an alleged violation of this act by an institution.

9 2. If the court finds that an institution committed a violation
10 under this act, the court may award, as applicable, the accused
11 student, accused student organization or alleged victim:

- 12 a. compensatory damages,
- 13 b. reasonable court costs incurred,
- 14 c. reasonable attorney fees incurred, and/or
- 15 d. monetary damages

16 in an amount equal to or more than the cost of tuition paid by or on
17 behalf of the accused student or alleged victim to the institution
18 for the academic period in which the violation occurred, in an
19 amount equal to or more than the amount of scholarship funding an
20 accused student has lost as a result of the outcome of a student
21 disciplinary proceeding and any other relief the court determines
22 just.

23 4. An action based upon a cause of this action under this act
24 shall be commenced within one (1) year after the date that an

1 accused student, accused student organization or alleged victim
2 receives final notice of the outcome of the student or student
3 organization's disciplinary proceeding.

4 SECTION 2. This act shall become effective July 1, 2018.

5 SECTION 3. It being immediately necessary for the preservation
6 of the public peace, health or safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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