

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3542

By: Caldwell (Chad)

AS INTRODUCED

An Act relating to higher education; enacting the Student and Administration Equality Act; defining terms; mandating procedural protections for students and student organizations in university disciplinary proceedings; creating a cause of action for violation of rights of students and student organizations under this act; limiting the time in which suits under this act may be brought; providing for codification; and providing an effective date.

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 3150.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Student and Administration Equality Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3150.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

1 As used in this act, unless the context otherwise requires, the
2 term "institutions of higher education" or "institution" means those
3 institutions defined in Section 3102 of Title 70 of the Oklahoma
4 Statutes.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3150.3 of Title 70, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A student enrolled at an institution of higher education who
9 is accused of a violation of the disciplinary or conduct rules that
10 carries a potential penalty of a suspension of fifteen (15) or more
11 days or expulsion shall have the right to be represented at the
12 student's expense by a licensed attorney or, if the student prefers,
13 a nonattorney advocate, who in either case may fully participate
14 during the disciplinary procedure or other procedure adopted and
15 used by the state-supported institution of higher education except
16 as provided under this act. When disciplinary proceedings subject
17 to this section arise from a complaint by a student against another
18 student, the complainant shall also have the right to be represented
19 at his or her own expense by a licensed attorney or, if the
20 complaining student prefers, a nonattorney advocate.

21 B. For purposes of this section, "fully participate" includes
22 the opportunity to make opening and closing statements, to examine
23 and cross-examine witnesses, and to provide the accuser or accused
24 with support, guidance, and advice. This section does not require

1 an institution of higher education to use formal rules of evidence
2 in disciplinary proceedings. The institution, however, shall make
3 good-faith efforts to include relevant evidence and exclude evidence
4 that is neither relevant nor probative.

5 C. Before the disciplinary proceeding is scheduled and at least
6 two (2) business days before a student may be questioned by an
7 institution of higher education or by an agent of the institution of
8 higher education about allegations of violations of the
9 institution's disciplinary or conduct rules, where the charges are
10 punishable by a suspension of fifteen (15) or more days or
11 expulsion, the university must advise the student in writing of his
12 or her rights under this act.

13 D. A student shall not have the right under this section to be
14 represented by a licensed attorney or nonattorney advocate for any
15 allegation of academic dishonesty as defined by the state-supported
16 institution of higher education.

17 E. A student organization that is officially recognized by an
18 institution of higher education and is accused of a violation of
19 disciplinary or conduct rules shall have the right to be
20 represented, at the student organization's expense, by a licensed
21 attorney or, if the student organization prefers, a nonattorney
22 advocate, who in either case may fully participate during the
23 disciplinary procedure or other procedure adopted and used by the
24 institution of higher education.

1 F. For purposes of this section, "disciplinary proceeding"
2 includes an investigatory interview or hearing, or any other
3 procedure conducted by the institution of higher education relating
4 to the alleged violation that the student or student organization
5 reasonably believes may result in disciplinary action against the
6 student or organization.

7 G. The right of the student or the student organization under
8 subsection A or E of this section to be represented, at the
9 student's or the student organization's expense, by the student's or
10 the student organization's choice of either an attorney or a
11 nonattorney advocate also applies until the conclusion of any campus
12 appellate process.

13 H. This act does not create a right for the student or student
14 organization to be represented at public expense.

15 I. The institution shall ensure that all parties to the
16 proceeding, including the accused student, the accused student
17 organization, and, if applicable, the accusing student, have access
18 to all material evidence, including both inculpatory and exculpatory
19 evidence, not later than one (1) week prior to the start of any
20 formal hearing or similar adjudicatory proceeding. Such evidence
21 may include but is not limited to complainant statements, third-
22 party witness statements, electronically stored information, written
23 communications, social media posts, and demonstrative evidence.

1 J. The institution shall ensure that the proceeding is carried
2 out free from conflicts of interest by ensuring that there are no
3 commingling of administrative or adjudicative roles. For purposes
4 of this subsection, an institution shall be considered to commingle
5 such roles if any individual carries out more than one of the
6 following roles with respect to the proceeding:

- 7 1. Victim counselor and victim advocate;
- 8 2. Investigator;
- 9 3. Institutional prosecutor;
- 10 4. Adjudicator; or
- 11 5. Appellate adjudicator.

12 K. This section does not affect the obligation of an
13 institution to provide equivalent rights to a student who is the
14 accuser or victim in the disciplinary proceeding under this section,
15 including equivalent opportunities to have others present and fully
16 participating during any institutional disciplinary proceeding, to
17 not limit the choice of attorney or nonattorney advocate in any
18 meeting or institutional disciplinary proceeding, and to provide
19 simultaneous notification of the institution's procedures for the
20 accused and the accuser or victim to appeal the result of the
21 institutional disciplinary proceeding.

22 L. Nothing in this act shall be deemed to prevent the temporary
23 suspension of a student pending an investigation.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3150.4 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any student or student organization whose rights under this
5 act have been violated may bring an action in any state court of
6 competent jurisdiction.

7 B. In an action brought under this act, if the state court
8 finds a violation of this act, the court shall award the aggrieved
9 person or student organization compensatory damages, reasonable
10 court costs, and attorney fees, including expert fees, monetary
11 damages of not less than the cost of tuition paid by the student or
12 on the student's behalf to the institution of higher education for
13 the semester during which the violation of the act occurred, plus
14 monetary damages of not less than the amount of any scholarship
15 funding lost as a result of the campus discipline, and any other
16 relief in equity or law as deemed appropriate including, but not
17 limited to, a de novo rehearing at the institution of higher
18 education, in accordance with this section.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3150.5 of Title 70, unless there
21 is created a duplication in numbering, reads as follows:

22 A person or student organization must bring suit for violation
23 of this act not later than two (2) years after the day the cause of
24 action accrues. For purposes of calculating the two-year limitation

1 period, the cause of action shall be deemed accrued on the date the
2 student or student organization receives final notice of discipline
3 from the institution of higher education.

4 SECTION 6. This act shall become effective November 1, 2022.

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