

STUDENT RIGHT TO ACTIVE COUNSEL

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill enacts language related to disciplinary proceedings in an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ enacts Title 53B, Chapter 27, Campus Individual Rights Act, including enacting provisions:
 - requiring an institution of higher education to allow certain parties to have legal representation at a disciplinary proceeding;
 - governing the exchange of evidence at a disciplinary proceeding;
 - prohibiting certain conflicts of interest in a disciplinary proceeding; and
 - authorizing a cause of action; and
- ▶ amends applicable governmental immunity provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-301, as last amended by Laws of Utah 2015, Chapter 342



ENACTS:

53B-27-101, Utah Code Annotated 1953

53B-27-102, Utah Code Annotated 1953

53B-27-201, Utah Code Annotated 1953

53B-27-203, Utah Code Annotated 1953

53B-27-204, Utah Code Annotated 1953

53B-27-205, Utah Code Annotated 1953

53B-27-206, Utah Code Annotated 1953

53B-27-207, Utah Code Annotated 1953

53B-27-208, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53B-27-101** is enacted to read:

CHAPTER 27. CAMPUS INDIVIDUAL RIGHTS ACT

Part 1. General Provisions

53B-27-101. Title.

(1) This chapter is known as the "Campus Individual Rights Act."

(2) The provisions of this chapter may not be interpreted to:

(a) govern campus law enforcement departments or law enforcement personnel; or

(b) otherwise replace or amend criminal procedures that govern law enforcement activities.

Section 2. Section **53B-27-102** is enacted to read:

53B-27-102. Definitions.

As used in this chapter, "institution" means an institution of higher education listed in Section **53B-1-102**.

Section 3. Section **53B-27-201** is enacted to read:

Part 2. Student Legal Representation

53B-27-201. Definitions.

As used in this part:

(1) "Academic dishonesty" means an act of dishonesty relating to a student's academic work or performance.

(2) "Accused student" means an individual enrolled in an institution who has allegedly violated a policy or rule.

(3) "Accused student organization" means a student organization that has allegedly violated a policy or rule.

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

(5) "Evidence" means information that is inculpatory or exculpatory as it relates to an accusation against an accused student or accused student organization, including:

(a) a complainant statement;

(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; and

(c) provide support, guidance, or advice to an accused student, accused student organization, or alleged victim.

(7) "Legal representation" means an attorney or, at a person's sole discretion, a nonattorney advocate.

(8) "Policy or rule" means a policy or rule of an institution that, if violated, may result:

(a) for a student, in suspension of 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.

(9) "Proceeding" means an adjudicatory meeting, whether formal or informal, including an appeal that is:

(a) required by a policy or rule; or

(b) held to determine whether a policy or rule has been violated.

(10) (a) "Student disciplinary proceeding" means a proceeding initiated by an institution to determine whether an accused student has violated a policy or rule.

(b) "Student disciplinary proceeding" does not include a proceeding that solely involves a student's academic dishonesty.

(11) "Student organization" means a club or other organization:

(a) that meets during noninstructional time;

(b) that is recognized by the institution at which the organization meets; and

(c) the majority of whose members are current students at the institution.

(12) (a) "Student organization disciplinary proceeding" means a proceeding initiated by an institution to determine whether an accused student organization has violated a rule or policy.

(b) "Student organization disciplinary proceeding" does not include a proceeding that solely involves a student's academic dishonesty.

Section 4. Section **53B-27-203** is enacted to read:

53B-27-203. Student disciplinary proceedings -- Legal representation.

(1) An institution may not prohibit:

(a) an accused student from being represented, at the accused student's expense, by legal representation at a student disciplinary proceeding that pertains to the accused student; or

(b) an accused student's legal representation from full participation in a student disciplinary proceeding that pertains to the accused student.

(2) An institution may not prohibit:

(a) an alleged victim from being represented, at the alleged victim's expense, by legal representation at a student disciplinary proceeding that pertains to the alleged victim; or

(b) the alleged victim's legal representation from full participation in a student disciplinary proceeding that pertains to the alleged victim.

(3) (a) An institution shall provide an accused student described in Subsection (1) or an alleged victim described in Subsection (2) written notice of the accused student's or alleged victim's rights under this section.

(b) Unless there are exigent circumstances that reasonably justify proceeding without providing notice under Subsection (3)(a), an institution shall establish policies and procedures

to ensure that the institution provides written notice of the accused student's or alleged victim's rights as soon as practicable but no later than seven days before a student disciplinary proceeding that pertains to the accused student or alleged victim.

Section 5. Section **53B-27-204** is enacted to read:

53B-27-204. Student organization disciplinary proceedings -- Legal representation.

(1) An institution may not prohibit:

(a) an accused student organization from being represented, at the accused student organization's expense, by legal representation at a student organization disciplinary proceeding that pertains to the accused student organization; or

(b) an accused student organization's legal representation from full participation in a student organization disciplinary proceeding that pertains to the accused student organization.

(2) An institution may not prohibit:

(a) an alleged victim from being represented, at the alleged victim's expense, by legal representation at a student organization disciplinary proceeding that pertains to the alleged victim; or

(b) the alleged victim's legal representation from full participation in a student organization disciplinary proceeding that pertains to the alleged victim.

(3) (a) An institution shall provide an accused student organization described in Subsection (1) or an alleged victim described in Subsection (2) written notice of the accused student organization's or alleged victim's rights under this section.

(b) Unless there are exigent circumstances that reasonably justify proceeding without providing notice under Subsection (3)(a), an institution shall establish policies and procedures to ensure that the institution provides written notice of the accused student organization's or alleged victim's rights as soon as practicable but no later than seven days before a student organization disciplinary proceeding that pertains to the accused student organization or alleged victim.

Section 6. Section **53B-27-205** is enacted to read:

53B-27-205. Exchange of evidence.

(1) An institution shall ensure that an accused student and an alleged victim have access to all material evidence that is in the institution's possession, including both inculpatory

and exculpatory evidence, not later than one week before the start of a proceeding.

(2) Nothing in this part may be interpreted to:

(a) provide for formal or informal discovery beyond the exchange of evidence described in Subsection (1); or

(b) incorporate or bind an institution to:

(i) the Utah Rules of Civil Procedure or the Utah Rules of Evidence; or

(ii) the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

Section 7. Section **53B-27-206** is enacted to read:

53B-27-206. Conflict of interest.

(1) Except as provided in Subsection (2), an institution shall prohibit an individual employed by or otherwise representing an institution from acting as an adjudicator, hearing officer, or appellate hearing officer if the individual has also served in one of the following roles for purposes of a student disciplinary proceeding or student organization disciplinary proceeding:

(a) an advocate or counselor for an alleged victim, accused student, or accused student organization;

(b) an investigator;

(c) an institutional prosecutor; or

(d) an advisor to a person described in Subsection (1)(a), (b), or (c).

(2) If an individual employed by the institution or otherwise representing the institution serves as an investigator and an institutional prosecutor for the alleged violation of a policy or rule, the institution shall advise an accused student, accused student organization, or alleged victim before the investigation proceeding.

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

Section 8. Section **53B-27-207** is enacted to read:

53B-27-207. Application -- Institution policies.

(1) Nothing in this part may be interpreted to prohibit an institution from temporarily suspending an accused student or accused student organization pending the completion of a student or student organization disciplinary proceeding.

(2) (a) An institution shall enact policies to govern proceedings in which a student has

183 a right to active counsel in accordance with this part.

184 (b) An institution may adopt a policy requiring the attorney or advocate of an accused
185 student, accused student organization, or alleged victim to submit questions for an opposing
186 party first to a hearing officer, provided that the hearing officer will only exclude questions that
187 in the hearing officer's good faith interpretation are irrelevant or unduly prejudicial.

188 (c) A hearing officer shall place the hearing officer's rationale for excluding a question
189 on the record for appellate review.

190 Section 9. Section **53B-27-208** is enacted to read:

191 **53B-27-208. Cause of action.**

192 (1) An accused student, accused student organization, or alleged victim may bring an
193 action in a court of competent jurisdiction for an alleged violation of this part by an institution.

194 (2) If the court finds that an institution committed a violation under Subsection (1), the
195 court may award, as applicable, the accused student, accused student organization, or alleged
196 victim:

197 (a) compensatory damages;

198 (b) reasonable court costs incurred;

199 (c) reasonable attorney fees incurred;

200 (d) monetary damages:

201 (i) in an amount equal to or more than the cost of tuition paid by or on behalf of the
202 accused student or alleged victim to the institution for the academic period in which the
203 violation occurred; and

204 (ii) in an amount equal to or more than the amount of scholarship funding an accused
205 student has lost as a result of the outcome of a student disciplinary proceeding; and

206 (e) any other relief the court determines just.

207 (3) An action based upon a cause of action under this part shall be commenced within
208 one year after the date that an accused student, accused student organization, or alleged victim
209 receives final notice of the outcome of the student or student organization disciplinary
210 proceeding.

211 Section 10. Section **63G-7-301** is amended to read:

212 **63G-7-301. Waivers of immunity.**

213 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual

obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,

245 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
246 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
247 or other public improvement; [~~and~~]
248 (i) subject to Subsection 63G-7-201(4), as to any injury proximately caused by a
249 negligent act or omission of an employee committed within the scope of employment[-]; and
250 (j) as to any action brought to obtain relief under Title 53B, Chapter 27, Part 2, Student
251 Legal Representation.

Legislative Review Note
Office of Legislative Research and General Counsel