**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “FUNDAMENTAL FAIRNESS IN COLLEGE DISCIPLINE ACT OF 2019” BY ADDING ARTICLE 4 TO CHAPTER 101, TITLE 59 ENTITLED “DISCIPLINARY PROCEDURE DUE PROCESS”, TO DEFINE NECESSARY TERMS, TO ESTABLISH THE REQUIREMENTS OF A PROCEEDING, TO ENUMERATE THE RIGHTS OF A STUDENT WHO IS SUBJECT TO A PROCEEDING, TO ESTABLISH STANDARDS FOR THE DISCLOSURE OF EVIDENCE RELATING TO THE PROCEEDING, TO REQUIRE WRITTEN STATEMENTS ENTERED AS EVIDENCE TO BE NOTARIZED, TO PROHIBIT CERTAIN DOCUMENTS FROM BEING USED AS EVIDENCE WITHOUT THE CONSENT OF BOTH PARTIES, TO ALLOW FOR THE INFORMAL DISPOSITION OF A PROCEEDING IN CERTAIN CIRCUMSTANCES, TO PROHIBIT IRRELEVANT, IMMATERIAL, OR UNDULY REPETITIVE EVIDENCE FROM BEING ADMITTED, TO APPLY THE STANDARDS FOR PRIVILEGE OF THE STATE TO A PARTY IN A PROCEEDING, TO ALLOW THE SUBMISSION OF EVIDENCE IN WRITTEN FORM IN CERTAIN CIRCUMSTANCES, TO REQUIRE A RECORD OF THE PROCEEDING BE MADE AND TO ENUMERATE THE REQUIRED CONTENTS OF THE RECORD, TO ALLOW A PARTY TO REQUEST A RECORDING OF THE PROCEEDING FOR TRANSCRIPTION, TO REQUIRE THE PRESIDING PERSON TO BE IMPARTIAL, TO ESTABLISH STANDARDS FOR THE PRESIDING PERSON TO MAKE A DECISION, TO REQUIRE AN INSTITUTION TO PROVIDE A STUDENT THE INTERNAL APPEALS PROCEDURE IF THE DECISION OF THE INSTITUTION IS ADVERSE TO THE STUDENT, TO ALLOW THE STUDENT OR INSTITUTION TO APPEAL TO THE CIRCUIT COURT OR ADMINISTRATIVE LAW COURT, TO ESTABLISH A PRESUMPTION OF NONVIOLATION FOR THE STUDENT AND THE BURDEN OF PROOF FOR THE INSTITUTION, TO REQUIRE ANY PUNISHMENT TO BE REASONABLE AND PROPORTIONATE TO THE VIOLATION, TO ALLOW THE CIRCUIT COURT OR ADMINISTRATIVE LAW COURT TO ISSUE AN INJUNCTION AND ALLOW FOR THE AWARD OF ATTORNEY’S FEES AND COSTS, AND TO ALLOW AN INSTITUTION IMMEDIATELY TO SUSPEND A STUDENT FOR ALLEGED MISCONDUCT IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “Fundamental Fairness in College Discipline Act of 2019”.

SECTION 2. Chapter 101, Title 59 of the 1976 Code is amended by adding:

“Article 4

Disciplinary Procedure Due Process

Section 59‑101‑810. For purposes of this article:

(1) ‘Institution’ means a post‑secondary two‑year or four‑year educational institution including:

(a) college or university regional campuses offering undergraduate, master’s, or doctoral programs;

(b) a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education;

(c) a regional campus of the University of South Carolina;

(d) a public institution of higher learning as defined in Section 59‑103‑5; or

(e) an independent institution of higher learning as defined in Section 59‑113‑50.

(2) ‘Presiding person’ means the person selected pursuant to institutional policy to preside and render findings of fact and sanctions during a proceeding and whose service is required to be neutral and objective and subject to the limitations of appointment as provided in this article.

(3) ‘Proceeding’ means a proceeding or ‘contested hearing’ involving an institutional action, either related to disciplinary or academic misconduct, against a student matriculating with the institution that may result in the imposition of a sanction for violation of an institutional rule, institutional policy, or code of conduct. The scope of the proceeding is limited to allegations of misconduct occurring on institutional property or at an institutionally sanctioned event. This term includes:

(a) ‘informal proceedings’, which means a meeting of a student and a representative of the institution to attempt a disposition by agreement; and

(b) ‘formal proceedings’ which means a hearing or other process where the student and institution presents evidence to an adjudicatory panel or presiding person.

(4) ‘Student’ means an individual taking classes or actively matriculating at the institution or whose matriculation is on‑going or which has ended at the institution before final disposition of a proceeding and who is under suspicion of disciplinary misconduct. This term also refers to organizations or groups conducting activities associated or sanctioned by the institution that are subject to institutional disciplinary action.

Section 59‑101‑820. (A)(1) In an informal or formal proceeding, all parties against whom a sanction may be imposed must be afforded an opportunity for a hearing after reasonable notice. The notice must include a:

(a) statement of the time, place, and nature of the proceeding;

(b) reference to the specific rule or rules governing the proceeding with a written copy of the rule or rules to accompany any notice of a proceeding; and

(c) short and plain statement of the violation alleged, the specific facts upon which the allegations are based, and the specific rule or policy alleged to be violated.

(2)(a) The student who is subject to sanction or disciplinary proceedings has the following rights during the disciplinary proceeding:

(i) the right to be present;

(ii) the right to be represented by legal counsel;

(iii) to present evidence;

(iv) the right to have counsel present evidence, cross‑examine witnesses, make objections, and present arguments.

(b) These rights to counsel apply to the appellate process.

(c) For the purpose of these proceedings, the institution, upon request of the student, shall make diligent effort to produce those witnesses who are students, staff or faculty of the institution, and documents within the control of the institution.

(3) At least twenty days before a formal dispositive proceeding, the parties to a proceeding shall provide to the opposing parties all affidavits, statements or other evidence to be introduced at the proceeding, and a list of witnesses known to the party with information pertinent to the allegation. The student may request and must receive the institution’s cooperation in requiring the attendance of matriculating students, witnesses, staff, or employees of the institution. In the event exigent circumstances require a proceeding that does not allow twenty days’ notice and production of evidence, the required information must be provided by the institution and in no event later than three days prior to the proceeding.

(4) Written statements introduced as evidence in a proceeding by either party must be notarized and signed under oath by the person making the statement.

(5) Written responses, police incident reports, memorandum of interviews or notes may not be used in substitution for evidence from witnesses unless consented to by the parties.

(6) Informal disposition may be made of any proceeding by stipulation, settlement, or default in participation or appearance. If an informal disposition is made, the parties to the proceeding may waive the requirements of findings of fact and a decision.

(7) Irrelevant, immaterial, or unduly repetitious evidence must be excluded from a proceeding. Evidence may be admitted if it is of the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.

(8) The laws of this State relating to privilege must be observed in all proceedings.

(9) Evidence meeting the requirements of this section may be received in written form if it will result in an expedited proceeding and will not substantially prejudice a party. The party adversely affected by this evidence must have an opportunity to receive the evidence in sufficient advance time to permit investigation and effective challenge.

(B) A record and recording must be kept of all proceedings. The record must include:

(1) all pleadings, motions, and rulings;

(2) all evidence received and considered;

(3) all matters officially noticed;

(4) questions, offers of proof, objections, and rulings on them;

(5) findings of fact and exceptions;

(6) the decision rendered in the proceeding; and

(7) objections to evidentiary matters.

(C) At the request of a party to a proceeding, a recording of the proceeding must be provided to the parties to permit transcription. If a transcription is prepared by either party, a copy must be provided to the opposing party.

(D)(1) A person who presides over a proceeding must be impartial and may not communicate with a party to the proceeding concerning an issue of fact or law except upon notice and opportunity to participate by all parties. All written communications to a presiding person by either party must be provided to all parties. To serve as a presiding person, the person must not have participated in a prior proceeding involving or arising from the same event or the same alleged misconduct, except concerning allegations affecting multiple students may be consolidated for proceeding purposes with the consent of the parties.

(2) The institution shall adopt a selection process for ‘presiding persons’ to ensure they are objective and not subject to influence by the institutional subdivision responsible for conducting disciplinary complaints.

(E) A decision must be rendered within a reasonable time after the conclusion of a proceeding. The decision and the findings of fact must be based on evidence in the record and a violation must be found by no less than a substantial evidence standard of review.

(F) Upon a ruling adverse to the student, the institution shall provide written information of the institution’s internal appeals process to the student.

(G) Students or institutions aggrieved by the decision in a proceeding are entitled to appeal the decision or sanction imposed within the institution and are entitled to judicial review in the Circuit Court or Administrative Law Court. The party prevailing in an appeal or legal action may be entitled to reasonable attorney’s fees and costs.

(H) Proceedings must be conducted under a presumption of nonviolation by the party accused, and the institution has the burden of proving to the contrary the violation occurred by clear and convincing evidence.

(I) The institutional sanction must be reasonable and proportionate to the proven violation and consistent with sanctions imposed on others similarly situated and disciplined. Sanctions must be determined and imposed on a case‑by‑case basis and may not be based upon a uniform ‘zero tolerance’ policy that does not take into account the facts and circumstances of each violation.

(J) The Circuit Court and Administrative Law Court may grant injunctive relief to a student. A successful party in an action may be awarded reasonable attorney’s fees and costs.

Section 59‑101‑830. (A) Notwithstanding the requirement that alleged violations subject to institutional action must occur on campus property or at institutionally sanctioned events, the institution has the right to immediately suspend a student, and thereafter conduct disciplinary proceedings, for alleged misconduct if the facts and circumstances support a reasonable belief that the student represents a danger to a specific student, faculty or staff member of the institution, or the public, or if the facts and circumstances support a reasonable articulated belief that the student’s continued matriculation on campus is likely to disrupt or disturb the institution’s educational activities.

(B) If an institution suspends a student pursuant to subsection (A), it must make a reasonable effort to accommodate the continuing educational needs of the student until the disciplinary proceeding concludes.”

SECTION 3. This act takes effect upon approval by the Governor.

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