**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3586**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. McDaniel

Document Path: LC-0136WAB23.docx

Introduced in the House on January 10, 2023

Currently residing in the House Committee on **Education and Public Works**

Summary: Student and Administration Equality Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/15/2022 House Prefiled

 12/15/2022 House Referred to Committee on **Education and Public Works**

 1/10/2023 House Introduced and read first time (House Journal‑page 220)

 1/10/2023 House Referred to Committee on **Education and Public Works** (House Journal‑page 220)

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**VERSIONS OF THIS BILL**

[12/15/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3586_20221215.docx)

A bill

to amend the South Carolina Code of Laws by enacting the “Student and Administration Equality Act”; and BY ADDING ARTICLE 4 TO CHAPTER 101, TITLE 59 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE REQUIREMENTS AND PROCEDURES CONCERNING STUDENT AND STUDENT ORGANIZATION DISCIPLINARY MATTERS AT PUBLIC INSTITUTIONS OF HIGHER LEARNING, AND TO MAKE THESE PROVISIONS APPLICABLE TO DISCIPLINARY PROCEEDINGS BEGINNING ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

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

SECTION 1. This act may be cited as the “Student and Administration Equality Act”.

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

 Article 4

 Student and Administration Equality Act

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

 (1) “Disciplinary proceeding” means an investigatory interview or hearing, or another procedure conducted by the public institution of higher learning relating to the alleged violation that the student or student organization reasonably believes may result in disciplinary action against the student or student organization.

 (2) “Fully participate” means the opportunity to be present, make opening and closing statements, to examine and cross‑examine witnesses, and to provide the accuser or accused student or student organization with support, guidance, and advice. This article does not require an institution of higher learning to use formal rules of evidence in disciplinary proceedings. The institution, however, shall make good faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative.

 (3) “Public institution of higher learning” or “institution” means those public institutions defined in Section 59‑103‑5.

 Section 59‑101‑820. (A) The institution shall maintain an administrative file of all disciplinary proceedings. The file shall include all documents and evidence in the institution’s possession or control relevant to the alleged violation and the institution’s investigation including, but not limited to exculpatory evidence, statements by the accuser and accused student, third‑party witness statements, electronically‑stored information, written communications, social media posts, demonstrative evidence, documents submitted by any participant, and the institution’s choice of a video recording, audio recording, or transcript of any disciplinary hearing ultimately held in the matter. The file may not include privileged documents or internal memorandums that the institution does not intend to introduce as evidence at a hearing on the matter.

 (B) The code of student conduct at each public institution of higher learning must include the following disciplinary rights and procedures for a student enrolled at an institution of higher learning who is accused of violating the nonacademic disciplinary or conduct rules that carry a potential penalty of a suspension of ten or more days or expulsion and a student organization officially recognized by a public institution of higher learning that is accused of a violation that is punishable by suspension or removal of the student organization from the institution:

 (1) The right to be represented at the student’s or the student organization’s expense by an attorney or, if the student or student organization prefers, by a nonattorney advocate, who in either case may fully anticipate during the disciplinary procedure or other procedure adopted and used by the public institution of higher learning except as provided under subsection (C). The right of the student or the student organization to be represented, at the student’s or the student organization’s expense, by the student’s or the student organization’s choice of either an attorney or a nonattorney advocate, also applies until the conclusion of any campus appellate process.

 (2) The express presumption of innocence and that the accused student or the student organization may not be considered guilty of the violation until the accused student or the student organization formally acknowledges responsibility or the conclusion of a hearing in which the institution has established every element of the alleged violation.

 (3) The right to a live hearing and the right to:

 (a) be present at a hearing;

 (b) make an opening and closing statement;

 (c) present relevant evidence; and

 (d) cross‑examine adverse witnesses through counsel or, at the student or student organization’s sole discretion, a nonattorney advocate. If the student or student organization does not have counsel or a nonattorney advocate to conduct the cross‑examination, the institution shall either appoint one to perform this function or provide an alternative method for conducting meaningful cross‑examination.

 (4) Before the disciplinary proceeding is scheduled, and at least two business days before a student or student organization may be questioned by an institution of higher learning or by an agent of the institution of higher learning about allegations of violations, the institution shall advise the student of his rights under this article in writing.

 (5) A student or student organization found to be in violation of the institution’s nonacademic or conduct rules must be afforded an opportunity to appeal the institution’s initial decision to an appellate entity that is an institutional employee or body that did not make the initial decision. Such an appeal must be filed within ninety days after receiving final notice of the institution’s decision. The institution may designate the appellate entity as the final institutional authority on the matter. Nothing in this article precludes a court from granting a prevailing plaintiff equitable relief.

 (6) Reasonable continuing access to the administrative file and the ability to make copies of all evidence or documents in the file beginning at least seven business days prior to a disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of the administrative file must be redacted if disclosure of the evidence is required by law.

 (7) The disciplinary proceedings are carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles. For the purposes of this item, an institution is considered to be commingling these roles if an individual carries out more than one of the following roles with respect to the proceeding:

 (a) advocate or counselor for a complaining or accused student;

 (b) investigator;

 (c) institutional prosecutor;

 (d) adjudicator; and

 (e) appellate adjudicator.

 (C) A student may be represented by a licensed attorney or nonattorney advocate for an allegation of academic dishonesty as defined by the public institution of higher learning.

 (D) This article does not create a right of a student or student organization to be represented at public expense.

 (E) The code of student conduct at each public institution of higher learning must include the right of the accuser in disciplinary proceedings subject to subsection (B) that arise from a complaint by a student against another student:

 (1) to be represented at his or her own expense by a licensed attorney or, if the complaining student prefers, a nonattorney advocate, who may fully participate during the disciplinary procedure or other procedure adopted by the institution. The right of the accuser to be represented, at the accuser’s expense, by the student’s or the student organization’s choice of either an attorney or a nonattorney advocate, also applies until the conclusion of any campus appellate process; and

 (2) to have reasonable continuing access to the administrative file and the ability to make copies of all evidence or documents in the file beginning at least seven business days prior to a disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of the administrative file must be redacted if disclosure of the evidence is required by law.

 (F) Where required by federal law, the right to appeal must be extended to a student accuser. In these cases, the student accuser and the accused student must be provided simultaneous notification of the institution’s procedures to appeal the result of the disciplinary proceeding.

 (G) Nothing in this article may be interpreted to impair the ability of an institution to take reasonable interim measures necessary to ensure the physical safety of members of the campus community during a timely investigation and adjudication of a student disciplinary issue including, but not limited to the ability to make adjustments in student housing arrangements, impose conditions of no contact between the accused student and the accuser, temporarily suspend a student, or ban a student from campus. Such reasonable interim measures must require:

 (1) within twenty‑four hours, written notice to the accused student of the interim measures that explains the institution’s reasons for enacting the interim measures;

 (2) within three business days after the written notice, unless otherwise waived by the accused student, an interim measure hearing to determine whether there is substantial evidence that the accused student poses a risk to the physical safety of a member of the campus community and that the interim measure is appropriate to mitigate that risk; and

 (3) at the interim measure hearing, the accuser and the accused student shall have the right to be represented by an attorney or nonattorney advocate who may fully participate in the interim measure hearing. The waiver of an accused student’s right to an interim measure hearing does not constitute an admission of guilt or a waiver of any additional rights afforded under this article.

 Section 59‑101‑830. (A) A student or student organization whose rights under this article have been violated may bring an action under this article in a court of competent jurisdiction in federal court.

 (B) In an action brought under this article, if the state court finds a violation of this article, the court shall award the aggrieved person or student organization compensatory damages, reasonable court costs, and attorneys’ fees, including expert fees, monetary damages of not less than the cost of tuition paid by the student or on the student’s behalf to the institution of higher learning for the semester during which the violation of the article occurred, plus monetary damages of not less than the amount of any scholarship funding lost as a result of the campus discipline, and any other relief in equity or law as considered appropriate including, but not limited to, a de novo rehearing at the institution of higher learning, in accordance with this article.

 Section 59‑101‑840. (A) A person or student organization must bring suit for violation of this article not later than one year after the day the cause of action accrues. For purposes of calculating the one‑year limitation period, the cause of action must be considered to have accrued on the date that the student or student organization receives final notice of discipline from the institution of higher learning.

 (B) The provisions of this act apply to disciplinary proceedings beginning after the effective date of this act.

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

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