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STUDENT RIGHT TO ACTIVE COUNSEL

2018 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, Part 3, Student Legal Representation, 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 2017, Chapter 300



28 ENACTS:

29 **53B-27-301**, Utah Code Annotated 1953

30 **53B-27-302**, Utah Code Annotated 1953

31 **53B-27-303**, Utah Code Annotated 1953

32 **53B-27-304**, Utah Code Annotated 1953

33 **53B-27-305**, Utah Code Annotated 1953

34 **53B-27-306**, Utah Code Annotated 1953

35 **53B-27-307**, Utah Code Annotated 1953

36 **53B-27-308**, Utah Code Annotated 1953

37 **53B-27-309**, Utah Code Annotated 1953

38

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

40 Section 1. Section **53B-27-301** is enacted to read:

41 **Part 3. Student Legal Representation**

42 **53B-27-301. Title.**

43 This part is known as "Student Legal Representation."

44 Section 2. Section **53B-27-302** is enacted to read:

45 **53B-27-302. Application.**

46 The provisions of this part may not be interpreted to:

47 (1) govern campus law enforcement departments or law enforcement personnel; or

48 (2) otherwise replace or amend criminal procedures that govern law enforcement

49 activities.

50 Section 3. Section **53B-27-303** is enacted to read:

51 **53B-27-303. Definitions.**

52 As used in this part:

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

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

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

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

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

64 (a) a complainant statement;

65 (b) a third-party witness statement;

66 (c) electronically stored information;

67 (d) a written communication;

68 (e) a post to social media; or

69 (f) demonstrative evidence.

70 (6) "Full participation" means the opportunity in a student or student organization
71 disciplinary proceeding to:

72 (a) make opening and closing statements;

73 (b) examine and cross-examine a witness; and

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

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

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

79 (a) for a student, in suspension of 10 calendar days or more or expulsion from the
80 institution; or

81 (b) for a student organization, in the suspension or the removal of institutional
82 recognition of the student organization.

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

85 (a) required by a policy or rule; or

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

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

89 (b) "Student disciplinary proceeding" does not include a proceeding that solely

90 involves a student's academic dishonesty.

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

92 (a) that meets during noninstructional time;

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

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

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

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

100 Section 4. Section **53B-27-304** is enacted to read:

101 **53B-27-304. Student disciplinary proceedings -- Legal representation.**

102 (1) An institution may not prohibit:

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

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

107 (2) An institution may not prohibit:

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

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

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

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

120 Section 5. Section **53B-27-305** is enacted to read:

121 **53B-27-305. Student organization disciplinary proceedings -- Legal**
122 **representation.**

123 (1) An institution may not prohibit:

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

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

129 (2) An institution may not prohibit:

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

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

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

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

144 Section 6. Section **53B-27-306** is enacted to read:

145 **53B-27-306. Exchange of evidence.**

146 (1) An institution shall ensure that an accused student and an alleged victim have
147 access to all material evidence that is in the institution's possession, including both inculpatory
148 and exculpatory evidence, no later than one week before the start of a proceeding.

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

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

- 152 (b) incorporate or bind an institution to:
- 153 (i) the Utah Rules of Civil Procedure or the Utah Rules of Evidence; or
- 154 (ii) the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

155 Section 7. Section **53B-27-307** is enacted to read:

156 **53B-27-307. Conflict of interest.**

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

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

164 (b) an investigator;

165 (c) an institutional prosecutor; or

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

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

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

173 Section 8. Section **53B-27-308** is enacted to read:

174 **53B-27-308. Application -- Institution policies.**

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

178 (2) (a) An institution shall enact policies to govern proceedings in which a student has
179 a right to active counsel in accordance with this part.

180 (b) An institution may adopt a policy requiring the attorney or advocate of an accused
181 student, accused student organization, or alleged victim to submit questions for an opposing
182 party first to a hearing officer, provided that the hearing officer will only exclude questions that

183 in the hearing officer's good faith interpretation are irrelevant or unduly prejudicial.

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

186 Section 9. Section **53B-27-309** is enacted to read:

187 **53B-27-309. Cause of action.**

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

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

193 (a) compensatory damages;

194 (b) reasonable court costs incurred;

195 (c) reasonable attorney fees incurred;

196 (d) monetary damages:

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

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

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

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

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

208 **63G-7-301. Waivers of immunity.**

209 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
210 obligation.

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

213 (c) The Division of Water Resources is not liable for failure to deliver water from a

214 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
215 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
216 condition, or safety condition that causes a deficiency in the amount of available water.

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

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

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

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

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

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

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

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

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

240 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
241 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

242 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
243 or other public improvement; ~~and~~

244 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury

245 proximately caused by a negligent act or omission of an employee committed within the scope
246 of employment[-]; and
247 (j) as to any action brought to obtain relief under Title 53B, Chapter 27, Part 3, Student
248 Legal Representation.

Legislative Review Note
Office of Legislative Research and General Counsel