

STUDENT RIGHT TO ACTIVE COUNSEL

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim 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 26, 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 use 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



28 ENACTS:

29 **53B-26-101**, Utah Code Annotated 1953

30 **53B-26-102**, Utah Code Annotated 1953

31 **53B-26-201**, Utah Code Annotated 1953

32 **53B-26-203**, Utah Code Annotated 1953

33 **53B-26-204**, Utah Code Annotated 1953

34 **53B-26-205**, Utah Code Annotated 1953

35 **53B-26-206**, Utah Code Annotated 1953

36 **53B-26-207**, Utah Code Annotated 1953

37 **53B-26-208**, Utah Code Annotated 1953



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

40 Section 1. Section **53B-26-101** is enacted to read:

41 **CHAPTER 26. CAMPUS INDIVIDUAL RIGHTS ACT**

42 **Part 1. General Provisions**

43 **53B-26-101. Title.**

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

45 (2) This part is known as "General Provisions."

46 Section 2. Section **53B-26-102** is enacted to read:

47 **53B-26-102. Definitions.**

48 As used in this chapter, "institution" means an institution of higher education listed in

49 Section [53B-1-102](#).

50 Section 3. Section **53B-26-201** is enacted to read:

51 **Part 2. Student Legal Representation**

52 **53B-26-201. Definitions.**

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 an accused student, an accused student organization, or an alleged victim
75 support, guidance, or advice.

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 a formal or an informal hearing, meeting, or other adjudicatory
84 proceeding, including an appeal that is:

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

86 (b) related to a policy or rule.

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 that:

92 (a) meets during noninstructional time;

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

94 (c) the majority of the organization's 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-26-203** is enacted to read:

101 **53B-26-203. 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) 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 no later than:

115 (a) 15 business days before the scheduled beginning date of a student disciplinary
116 proceeding that pertains to the accused student or alleged victim; and

117 (b) two business days before the accused student is questioned by the institution or an
118 agent of the institution.

119 Section 5. Section **53B-26-204** is enacted to read:

120 **53B-26-204. Student organization disciplinary proceedings -- Legal**

121 **representation.**

122 (1) An institution may not prohibit:

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

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

128 (2) An institution may not prohibit:

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

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

134 (3) An institution shall provide an accused student organization described in
135 Subsection (1), or an alleged victim described in Subsection (2), written notice of the accused
136 student organization's or alleged victim's rights under this section no later than:

137 (a) 15 business days before the scheduled beginning date of a student organization
138 disciplinary proceeding that pertains to the accused student organization or alleged victim; and

139 (b) two business days before a member of the accused student organization is
140 questioned by the institution or an agent of the institution.

141 Section 6. Section **53B-26-205** is enacted to read:

142 **53B-26-205. Evidence.**

143 (1) An institution shall:

144 (a) make a good faith effort in a student or student organization disciplinary proceeding
145 to:

146 (i) include relevant evidence; and

147 (ii) exclude evidence that is not relevant or probative; and

148 (b) ensure that each party to a student or student organization disciplinary proceeding,
149 including an alleged victim, has access to material evidence no later than seven business days
150 before the day on which a student or student organization disciplinary proceeding is held.

151 (2) Nothing in this part requires an institution to comply with state or federal rules of

152 evidence for a student or student organization disciplinary proceeding.

153 Section 7. Section **53B-26-206** is enacted to read:

154 **53B-26-206. Conflict of interest.**

155 An institution shall prohibit a person employed by or otherwise representing an
156 institution from acting in more than one of the following roles for purposes of a student or
157 student organization disciplinary proceeding:

158 (1) an advocate or counselor for an alleged victim, accused student, or accused student
159 organization;

160 (2) an investigator;

161 (3) an institutional prosecutor;

162 (4) an adjudicator;

163 (5) an appellate adjudicator; or

164 (6) an advisor to a person described in Subsection (1), (2), (3), (4), or (5).

165 Section 8. Section **53B-26-207** is enacted to read:

166 **53B-26-207. Application.**

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

170 Section 9. Section **53B-26-208** is enacted to read:

171 **53B-26-208. Cause of action.**

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

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

177 (a) compensatory damages;

178 (b) reasonable court costs incurred;

179 (c) reasonable attorney fees incurred;

180 (d) monetary damages:

181 (i) in an amount equal to or more than the cost of tuition paid by or on behalf of the
182 accused student or alleged victim to the institution for the academic period in which the

183 violation occurred; and
184 (ii) in an amount equal to or more than the amount of scholarship funding an accused
185 student has lost as a result of the outcome of a student disciplinary proceeding; and
186 (e) any other relief the court determines just.
187 (3) An action based upon a cause of action under this part shall be commenced within
188 one year after the date that an accused student, accused student organization, or alleged victim
189 receives final notice of the outcome of the student or student organization disciplinary
190 proceeding.

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

192 **63G-7-301. Waivers of immunity.**

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

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

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

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

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

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

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

212 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of
213 Utah Constitution, Article I, Section 22, for the recovery of compensation from the

214 governmental entity when the governmental entity has taken or damaged private property for
215 public uses without just compensation;

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

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

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

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

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

226 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
227 or other public improvement; [~~and~~]

228 (i) subject to Subsection 63G-7-201(4), as to any injury proximately caused by a
229 negligent act or omission of an employee committed within the scope of employment[-]; and

230 (j) as to any action brought to obtain relief under Title 53B, Chapter 26, Part 2, Student
231 Legal Representation.

Legislative Review Note
Office of Legislative Research and General Counsel