

1 HOUSE BILL NO. 950
2 INTRODUCED BY M. HOPKINS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE STUDENT AND ADMINISTRATION
5 EQUALITY ACT; PROVIDING DEFINITIONS; ESTABLISHING PROCEDURAL PROTECTIONS AND RIGHTS
6 FOR STUDENTS IN DISCIPLINARY PROCEEDINGS; PROVIDING THAT VIOLATIONS ARE A CAUSE OF
7 ACTION; ESTABLISHING A STATUTE OF LIMITATIONS; PROVIDING AN APPROPRIATION; AND
8 PROVIDING AN EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Student and
13 Administration Equality Act".

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15 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4], unless the context clearly
16 indicates otherwise, the following definitions apply:

17 (1) "Disciplinary proceeding" means an investigatory interview or hearing or any other procedure
18 conducted by the public postsecondary institution relating to the alleged violation that a student or student
19 organization reasonably believes may result in disciplinary action against the student or student organization.

20 (2) "Fully participate" means the opportunity to be present, to make opening and closing
21 statements, to examine and cross-examine witnesses, and to provide the accuser or accused student or
22 student organization with support, guidance, and advice. [Sections 1 through 4] do not require a public
23 postsecondary institution to use formal rules of evidence in disciplinary proceedings. The institution, however,
24 shall make good faith efforts to include relevant evidence and exclude evidence that is neither relevant nor
25 probative.

26 (3) "Public postsecondary institution" or "institution" means:

27 (a) a unit of the Montana university system as described in 20-25-201; and

28 (b) a Montana community college defined and organized as provided in 20-15-101.

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2 **NEW SECTION. Section 3. Disciplinary proceedings -- rights and procedural protections.** (1) A
 3 public postsecondary institution shall maintain an administrative file of all disciplinary proceedings. The file must
 4 include all documents and evidence in the institution's possession or control relevant to the alleged violation
 5 and the institution's investigation, including but not limited to exculpatory evidence, statements by the accuser
 6 and accused student, third-party witness statements, electronically stored information, written communications,
 7 social media posts, demonstrative evidence, documents submitted by any participant, and the institution's
 8 choice of a video recording, audio recording, or transcript of any disciplinary hearing ultimately held in the
 9 matter. The file may not include privileged documents or internal memorandums that the institution does not
 10 intend to introduce as evidence at any hearing on the matter.

11 (2) The code of student conduct at a public postsecondary institution must include the following
 12 disciplinary rights and procedural protections for a student enrolled at the institution who is accused of violating
 13 the nonacademic disciplinary or conduct rules that carry a potential penalty of a suspension of 10 or more days
 14 or expulsion and a student organization officially recognized by a public postsecondary institution that is
 15 accused of a violation that is punishable by suspension or removal of the student organization from the
 16 institution:

17 (a) the right to be represented at the student's or the student organization's expense by an
 18 attorney or, if the student or the student organization prefers, by a nonattorney advocate, who in either case
 19 may fully participate during the disciplinary procedure or other procedure adopted and used by the public
 20 postsecondary institution, except as provided in subsection (3). The right of the student or the student
 21 organization to be represented, at the student's or the student organization's expense, by the student's or the
 22 student organization's choice of either an attorney or a nonattorney advocate, also applies until the conclusion
 23 of any campus appellate process.

24 (b) the express presumption of innocence and that the accused student or the accused student
 25 organization may not be considered guilty of the violation until the accused student or the accused student
 26 organization formally acknowledges responsibility or the conclusion of a hearing in which the institution has
 27 established every element of the alleged violation;

28 (c) the right to a live hearing, and the right to:

1 (i) be present at a hearing;
2 (ii) make an opening and closing statement;
3 (iii) present relevant evidence; and
4 (iv) cross-examine adverse witnesses through counsel or, at the student's or the student
5 organization's sole discretion, a nonattorney advocate. If the student or the student organization does not have
6 counsel or a nonattorney advocate to conduct the cross-examination, the institution shall either appoint one to
7 perform this function or provide an alternative method for conducting meaningful cross-examination.

8 (d) the timely advisement of rights. Before the disciplinary proceeding is scheduled, and at least 2
9 business days before a student or a student organization is to be questioned by a public postsecondary
10 institution or by an agent of the institution about allegations of violations, the institution shall advise the student
11 or the student organization of the student's or the student organization's rights under this section in writing.

12 (e) the opportunity to appeal. A student or a student organization that is found to be in violation of
13 the institution's nonacademic or conduct rules must be afforded an opportunity to appeal the institution's initial
14 decision to an appellate entity that is an institutional employee or body that did not make the initial decision.
15 The appeal must be filed within 90 days after receiving final notice of the institution's decision. The institution
16 may designate the appellate entity as the final institutional authority on the matter. Nothing in [sections 1
17 through 4] may preclude a court from granting a prevailing plaintiff equitable relief.

18 (f) reasonable continuing access to the administrative file and the ability to make copies of all
19 evidence or documents in the file beginning at least 7 business days prior to any disciplinary hearing, or sooner
20 if otherwise specified under federal law, except that individual portions of the administrative file must be
21 redacted if disclosure of the evidence is required by law;

22 (g) the disciplinary proceedings are carried out free from conflicts of interest by ensuring that there
23 is no commingling of administrative or adjudicative roles. For the purposes of this subsection (2)(g), an
24 institution is considered to be commingling roles if any individual carries out more than one of the following
25 roles with respect to the proceeding:

26 (i) advocate or counselor for a complaining or accused student or student organization;
27 (ii) investigator;
28 (iii) institutional prosecutor;

1 (iv) adjudicator; and

2 (v) appellate adjudicator.

3 (3) A student or a student organization does not have the right under this section to be
4 represented by an attorney or nonattorney advocate for any allegation of academic dishonesty as defined by
5 the public postsecondary institution.

6 (4) This section does not create a right of a student or a student organization to be represented at
7 public expense.

8 (5) The code of student conduct at a public postsecondary institution must include the following
9 rights of the student accuser in disciplinary proceedings, subject to subsection (2), that arise from a complaint
10 by a student against another student:

11 (a) to be represented at the student accuser's own expense by an attorney or, if the student
12 accuser prefers, a nonattorney advocate, who may fully participate during the disciplinary procedure or other
13 procedure adopted by the institution. The right of the student accuser to be represented at the student
14 accuser's own expense or by the student accuser's choice of either an attorney or a nonattorney advocate also
15 applies until the conclusion of any campus appellate process.

16 (b) to have reasonable continuing access to the administrative file and the ability to make copies of
17 all evidence or documents in the file beginning at least 7 business days prior to any disciplinary hearing, or
18 sooner if otherwise specified under federal law, except that individual portions of the administrative file must be
19 redacted if disclosure of the evidence is required by law.

20 (6) When required by federal law, the right to appeal must be extended to a student accuser. In
21 these cases, the student accuser and the accused student must be provided simultaneous notification of the
22 institution's procedures to appeal the result of the disciplinary proceeding.

23 (7) Nothing in this section may be interpreted to impair an institution's ability to take reasonable
24 interim measures necessary to ensure the physical safety of members of the campus community during a
25 timely investigation and adjudication of a student disciplinary issue, including but not limited to the ability to
26 make adjustments in student housing arrangements, impose conditions of no contact between the accused
27 student and the accuser, temporarily suspend a student, or ban a student from campus. The reasonable interim
28 measures must include:

1 (a) within 24 hours, written notice to the accused student of the interim measures that explains the
2 institution's reasons for enacting the interim measures;

3 (b) within 3 business days of the written notice, unless otherwise waived by the accused student,
4 an interim measure hearing to determine whether there is substantial evidence that the accused student poses
5 a risk to the physical safety of a member of the campus community and that the interim measure is appropriate
6 to mitigate that risk; and

7 (c) at the interim measure hearing, the accuser and the accused student must have the right to be
8 represented by an attorney or a nonattorney advocate who may fully participate in the interim measure hearing.
9 An accused student's waiver of the right to an interim measure hearing may not constitute an admission of guilt
10 or a waiver of any additional rights afforded under this section.

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12 NEW SECTION. Section 4. Cause of action -- statute of limitations. (1) Any student or student
13 organization whose rights under [sections 1 through 4] have been violated may bring an action in district court.

14 (2) In an action brought under [sections 1 through 4], if the court finds a violation of this part, the
15 court shall award the aggrieved student or student organization compensatory damages, reasonable court
16 costs, and attorney fees, including expert fees, monetary damages of not less than the cost of tuition paid by
17 the student or on the student's behalf to the public postsecondary institution for the semester during which the
18 violation occurred, plus monetary damages of not less than the amount of any scholarship funding lost as a
19 result of the campus discipline, and any other relief in equity or law as considered appropriate, including but not
20 limited to a de novo rehearing at the public postsecondary institution in accordance with [sections 1 through 4].

21 (3) An action against a public postsecondary institution based on the institution's alleged violation
22 of [sections 1 through 4] must be commenced not later than 1 year after the day the cause of action accrues.
23 For the purposes of calculating the 1-year limitation period, the cause of action is considered accrued on the
24 date that the student or student organization receives final notice of discipline from the institution.

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26 NEW SECTION. Section 5. Appropriation. There is appropriated \$10,000 from the general fund to
27 the office of the commissioner of higher education for the biennium beginning July 1, 2023, for the purpose of
28 notifying public secondary institutions and supporting the implementation of [sections 1 through 4].

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2 NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 4] are intended to be
3 codified as an integral part of Title 20, chapter 25, part 5, and the provisions of Title 20, chapter 25, part 5,
4 apply to [sections 1 through 4].

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6 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2023.

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