AN ACT

To enact R.S. 17:3394, relative to the powers and duties of public postsecondary education management boards; to require a disciplinary hearing process for students and student organizations accused of committing non-academic offenses; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. This Act shall be known and may be cited as the "Student Due Process and Protection Act".

Section 2. R.S. 17:3394 is hereby enacted to read as follows:

§3394. Disciplinary proceedings

A. Each public postsecondary education management board shall adopt a policy relative to disciplinary proceedings, right to counsel for students and student organizations, and appeals.

B. Any student enrolled at an institution under the jurisdiction of the management board and accused of a violation of the disciplinary or conduct rules that carries a potential penalty of suspension of ten or more days or expulsion has the right to be represented, at the student's expense, by an attorney or a non-attorney advocate who may fully participate during any disciplinary proceeding or during any other procedure adopted and used by that institution to address an alleged violation.
of the institution's non-academic rules or policies. This right applies to both the
student who has been accused of the violation and to the student who is the alleged
victim, if applicable. Prior to scheduling a disciplinary proceeding, the institution
shall inform the students in writing of their rights as provided by this Section.

C. Any student organization officially recognized by an institution under the
jurisdiction of the management board has the right to be represented, at the
organization's expense, by an attorney or a non-attorney advocate who may fully
participate during any disciplinary proceeding or during any other procedure adopted
and used by the institution to address an alleged violation of the institution's non-
academic rules or policies. This right applies to both the student organization that
has been accused of the alleged violation and the alleged victim, if applicable.

D. A student or student organization subject to a charge or disciplinary
proceeding by the institution is entitled, upon receiving notice of the charge, to
notice of any and all violations of the institution's non-academic rules or policies and
the disciplinary proceedings or charges that will occur as a result. This notice shall
include but need not be limited to each and every section of the institution's rules or
policies that the student or student organization is alleged to have violated and any
evidence the institution used and collected in making the charge.

E. When a violation is punishable by suspension of ten or more days or
expulsion, or when a violation by a student organization is punishable by suspension
or removal of the organization from the institution, the disciplinary procedures
contained in the code of student conduct shall include but need not be limited to the
following:

(1) Afford the accused student or organization the express presumption of
innocence and set forth that he or the organization may not be deemed guilty of the
violation until he or the organization formally acknowledges responsibility or the
conclusion of a hearing where the institution has established every element of the
alleged violation.

CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
(2) Require the institution to maintain an administrative file of the 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, 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 shall not include privileged documents or internal memorandums that the institution does not intend to introduce as evidence at any hearing on the matter.

(3) Provide both the accused student or organization and the alleged victim 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 any disciplinary hearing, or sooner if otherwise specified under federal law, except that individual portions of the administrative file shall be redacted if disclosure of the evidence is required by law.

(4) Ensure that all disciplinary proceedings are carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles. For purposes of this Paragraph, an institution shall be considered to commingle such roles if any individual carries out more than one of the following roles with respect to any disciplinary proceeding:

(a) Victim counselor and victim advocate.
(b) Investigator.
(c) Institutional prosecutor.
(d) Adjudicator.
(e) Appellate adjudicator.

F.(1) Any student or student organization that is found to be in violation of the institution's non-academic rules or policies shall be afforded an opportunity to appeal the institution's initial decision to an institutional administrator or body that did not make the initial decision. Such an appeal shall be filed within ninety days.
after receiving final notice of the institution's decision. The right to appeal the result
of the institution's disciplinary proceeding also applies to the student who is the
alleged victim, if applicable.

(2) The right of the student or student organization as provided in
Subsections A and B of this Section to be represented, at the student's or the
organization's expense, by the student's or the organization's attorney or non-attorney
advocate also applies to the appeal.

(3) The issues that may be raised on appeal include new evidence,
contradictory evidence, and evidence that the student or student organization was not
afforded due process. The institutional body considering the appeal may consider
police reports, transcripts, and the outcome of any civil or criminal proceeding
directly related to the appeal.

G. Upon consideration of the evidence, the institutional body considering the
appeal may grant the appeal, deny the appeal, order a new hearing, or reduce or
modify the punishment. If the appeal results in the reversal of the decision or a
lessening of the sanction, the institution may reimburse the student for any tuition
and fees paid for the period of suspension or expulsion which had not been
previously refunded, if applicable.

H. For purposes of this Section, "fully participate" includes the opportunity
to make opening and closing statements, to examine and cross-examine witnesses,
and to provide the alleged victim or accused with support, guidance, and advice. This
Section does not require an institution to use formal rules of evidence in institutional
disciplinary proceedings. The institution, however, shall make good faith efforts to
include relevant evidence and exclude evidence which is neither relevant nor
probative.

I. This Section does not affect the obligation of an institution to provide
equivalent rights to a student who is the alleged victim in the disciplinary
proceeding, including equivalent opportunities to have others present during an
institutional disciplinary proceeding, to an unrestricted choice of attorney or non-
attorney advocate in any meeting or institutional disciplinary proceeding, and to be
provided simultaneous notification of the institution's procedures for the accused and
the alleged victim to appeal the result of the institutional disciplinary proceeding, if
applicable.

J. Any student or student organization that has its rights under this Section
violated may bring a private right of action against the institution and its agents
acting in their official capacities to recover actual damages. If the court finds this
Section or the student or student organization's rights to due process have been
violated, the court shall award three times the actual damages sustained. If damages
are awarded under this Subsection, the court shall award to the person or
organization bringing such action reasonable attorney fees and costs.

K. Nothing in this Section shall be construed to impair an institution's ability
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 mutual no-
contact between the accused student and the alleged victim, temporarily suspend a
student, or ban a student from campus. Such reasonable interim measures shall
require the following:

(1) Within twenty-four hours of the alleged violation being deemed an
immediate threat, written notice of the interim measure that explains the institution's
reasons for enacting the measures.

(2) Within three business days of the written notice pursuant to Paragraph
(1) of this Subsection, unless otherwise waived by the accused student, an interim
measure hearing to determine whether there is substantial evidence that the 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. At the hearing, both the
accused student and the alleged victim shall have the right to be represented as
provided in Subsection B of this Section. An accused student's waiver of the right
to an interim measure hearing shall not constitute an admission of guilt or a waiver of any additional rights provided for in this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 364 Reengrossed 2022 Regular Session McKnight

Abstract: Establishes disciplinary hearing procedure for public postsecondary students and student organizations.

Proposed law requires public postsecondary education management boards to establish policies relative to the procedure for students or student organizations being charged with non-academic offenses to use an attorney or non-attorney advocate in their defense at disciplinary proceedings and appeal hearings. Such a policy shall apply to a student or student organization being accused of violating a non-academic rule or policy and shall include:

1. Requirements for notice of a charge being brought against a student or student organization.
2. The opportunity for a student or student organization to appeal a decision that it was in violation of a non-academic policy or rule within 90 days of the decision.
3. The alleged victim having an opportunity to be represented by an attorney or non-attorney advocate.

Relative to student violations punishable by suspension of 10 or more days or expulsion and organization violations punishable by suspension or removal of the organization from the institution, disciplinary procedures contained in the code of student conduct shall:

1. Afford the accused a presumption of innocence.
2. Require the institution to maintain a file of disciplinary proceedings.
3. Provide for access to the file by the accused and the victim.
4. Ensure that proceedings are free from conflicts of interest by preventing commingling of administrative or adjudicative roles.

Authorizes a court to award treble damages for a violation of proposed law.

Authorizes institutions to take reasonable interim measures to maintain the safety of members of the campus community during the investigation and adjudication if the student poses a risk.

(Adds R.S. 17:3394)
Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Add provisions relative to serious offenses with specified punishment requirements.
2. Authorize institutions to take interim measures relative to a student that could be an immediate threat.
3. Remove role of attorney general in an action by a student or organization against an institution.
4. Remove provisions regarding an accuser who is not an alleged victim.