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HOUSE BILL NO. 1831

Offered January 9, 2019

Prefiled January 2, 2019

A BILL to amend the Code of Virginia by adding in Chapter 8 of Title 23.1 an article numbered 4, consisting of sections numbered 23.1-819, 23.1-820, and 23.1-821, relating to public institutions of higher education; enrolled students; disciplinary proceedings; due process.

Patrons—Lindsey, Aird, Bagby, Cole, Gooditis, Hayes, Keam, Kory, Levine, McQuinn, Plum, Rasoul and Watts; Senator: Lucas

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 23.1 an article numbered 4, consisting of sections numbered 23.1-819, 23.1-820, and 23.1-821, as follows:

*Article 4.**Disciplinary Proceedings; Due Process.***§ 23.1-819. Definitions.**

As used in this article, unless the context requires a different meaning:

"Formal proceeding" means a proceeding in which the parties present evidence to a presiding person.

"Informal proceeding" means a meeting of a representative of a public institution of higher education and a student to attempt a disposition by agreement.

"Presiding person" means the person selected by a public institution of higher education to preside over, render findings of fact and decisions during, and impose sanctions during a formal proceeding in a neutral and objective manner.

"Proceeding" means a disciplinary hearing, meeting, or similar process initiated by a public institution of higher education against a student that may result in the imposition of sanctions on such student by such institution.

"Proceeding" includes formal proceeding and informal proceeding.

"Student" means a student enrolled at a public institution of higher education who is alleged to have violated a rule, policy, or code of student conduct adopted by the institution.

§ 23.1-820. Proceedings; requirements.

A. In any proceeding, the public institution of higher education shall provide to the student written notice of (i) the specific rule, policy, or code of student conduct that the student is alleged to have violated and the facts upon which such allegation is based; (ii) the time, place, and nature of the proceeding; and (iii) the rules governing the proceeding.

B. In any proceeding, the student has the right to be present, be represented by legal counsel for the duration of the proceeding and any appeal of the decision or sanctions imposed in the proceeding, present evidence, cross-examine witnesses, make objections, and present arguments.

C. In any proceeding, each party shall:

1. Provide to the opposing parties in writing and as soon as practicable, but no later than three days prior to the proceeding, all affidavits, statements, and other evidence to be introduced at the proceeding and a list of witnesses with information pertinent to the proceeding;

2. Ensure that each written statement to be introduced as evidence in the proceeding is notarized and signed under oath by the individual who makes the statement;

3. Obtain the consent of the opposing party to use written responses, police incident reports, memorandums of interviews, or notes as a substitute for evidence from witnesses; and

4. Observe all relevant laws and rules regarding privileged communications.

D. Any public institution of higher education and student may forgo a formal proceeding and settle an alleged violation through alternative means at any time.

E. No person shall preside over a formal proceeding if he has presided over a prior proceeding involving or arising from the same event or alleged violation.

F. In any formal proceeding, the presiding person shall:

1. Exclude irrelevant, immaterial, or unduly repetitious evidence;

2. Ensure that both parties are present when either party communicates orally with the presiding person;

3. Provide one party with any written communication that the presiding person receives from the other party to the proceeding;

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58 4. Base his findings of fact and decision on the evidence in the record, apply a presumption that the
59 student did not commit a violation, and require the institution to prove a violation by a preponderance
60 of the evidence;

61 5. Render a decision within a reasonable time after the conclusion of the formal proceeding. The
62 decision and the findings of fact shall be based on evidence in the record and a violation shall be found
63 by a preponderance of the evidence;

64 6. Ensure that any sanctions imposed on a student found to have committed a violation are
65 reasonable based on the circumstances and proportional based on other similarly situated students;

66 7. Keep a record and recording of each formal proceeding over which he presides, including all
67 pleadings, motions, rulings, evidence received and considered, matters officially noticed, questions, offers
68 of proof, objections, rulings on such objections, findings of fact and exceptions, and decisions rendered
69 in the proceeding; and

70 8. Provide a copy of the recording of the formal proceeding to either party, upon request.

71 G. Upon a ruling adverse to the student, the institution shall provide to the student written
72 information regarding the institution's internal appeals process.

73 H. Any student or institution aggrieved by the decision rendered or sanctions imposed by the
74 presiding person may appeal such decision or sanctions in the circuit court of the locality in which the
75 institution is located, which may grant injunctive relief and award the successful appellant court costs
76 and reasonable attorney fees.

77 **§ 23.1-821. Proceedings; immediate suspension.**

78 A. Notwithstanding the provisions of § 23.1-820 or any other provision of law to the contrary, any
79 public institution of higher education may immediately suspend a student pending the completion of the
80 proceeding for such student if the facts and circumstances support a reasonable belief that (i) the
81 student represents a danger to another individual enrolled at or employed by the institution or (ii) the
82 student's continued enrollment is likely to disrupt or disturb the institution's educational activities.

83 B. If an institution suspends a student pursuant to subsection A, it shall make a reasonable effort to
84 accommodate the continuing educational needs of the student until the proceeding concludes.