

# What to Do If Your Institution Does Not Allow Counsel in the Judicial Process

If you go to a public school outside the states of Tennessee, Oregon, North Carolina, North Dakota, or Arkansas your administration may not allow students the right to counsel in their judicial process. Tennessee and Oregon allow full due process rights, including counsel, North Carolina and North Dakota allow counsel if expulsion or at least a 9 day suspension is on the table, and Arkansas allows counsel on an appeal of expulsion or a suspension of ten days or more. If your school does not allow counsel within their judicial system we encourage you to reach out to your legislators, student government, and us at FIRE to assist and support you in getting the Students & Administration Equality Act passed in your state. Please feel free to review our model draft below to assist you in doing so.

If you have any questions, comments, or concerns do not hesitate to reach out to us at [fire@thefire.org](mailto:fire@thefire.org) or give us a call at (215) 717-3473.

## SENATE BILL No. XX

December xx, 2015, Introduced by Senator \_\_\_\_\_ and referred to the committee on education.

A bill to amend \_\_\_\_\_, entitled "the student and administration equality act," by adding section xx.

THE PEOPLE OF THE STATE OF [NAME OF STATE] ENACT:

Sec. xx. As used in this section, unless the context otherwise requires, the term "institutions of higher education" or "institution" means those institutions defined in [Citation to state statute].

(1) A student enrolled at an institution of higher education who is accused of a violation of the disciplinary or conduct rules that carries a potential penalty of a suspension of 10 or more days or expulsion shall have the right to be represented at the student's expense by a licensed attorney or, if the student prefers, a nonattorney advocate, who in either case may fully participate during the disciplinary procedure or other procedure adopted and used by the state-supported institution of higher education except as provided under subdivision 1. (2) of this section. When disciplinary proceedings subject to this section arise from a complaint by a student against another student, the complaining student shall also have the right to be represented at his or her own expense by

a licensed attorney or, if the complaining student prefers, a nonattorney advocate.

(2) 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 accuser or accused with support, guidance, and advice. This section does not require an institution of higher education to use formal rules of evidence in disciplinary proceedings. The institution, however, shall make good faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative.

(3) Before the disciplinary proceeding is scheduled and at least two business days before a student may be questioned by an institution of higher education or by an agent of the institution of higher education about allegations of violations of the institution's disciplinary or conduct rules, where the charges are punishable by a suspension of 10 or more days or expulsion, the university must advise the student in writing of his or her rights under this Act.

(4) A student shall not have the right under this section to be represented by a licensed attorney or nonattorney advocate for any allegation of academic dishonesty as defined by the state-supported institution of higher education.

(5) A student organization that is officially recognized by an institution of higher education and that is accused of a violation of disciplinary or conduct rules shall have the right to be represented, at the student organization's expense, by a licensed attorney or, if the student organization prefers, a nonattorney advocate, who in either case may fully participate during the disciplinary procedure or other procedure adopted and used by the institution of higher education.

(6) For purposes of this section, "disciplinary proceeding" includes an investigatory interview or hearing or any other procedure conducted by the institution of higher education relating to the alleged violation that the student or student organization reasonably believes may result in disciplinary action against the student or organization.

(7) The right of the student or the student organization under subsection 1 or 5 to be represented, at the student's or the student organization's expense, by the student's or the student organization's choice of either an attorney or a nonattorney advocate, also applies until the conclusion of any campus appellate process.

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

(9) The institution shall ensure that all parties to the proceeding, including the accused student, the accused student organization, and if applicable, the accusing student, have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. Such evidence may include but is not limited to complainant statements, third-party witness statements, electronically stored information, written communications, social media posts, and demonstrative evidence.

(10) The institution shall ensure that the proceeding is 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 the proceeding:

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

(11) This section does not affect the obligation of an institution to provide equivalent rights to a student who is the accuser or victim in the disciplinary proceeding under this section, including equivalent opportunities to have others present and fully participating during any institutional disciplinary proceeding, to not limit the choice of attorney or nonattorney advocate in any meeting or institutional disciplinary proceeding, and to provide simultaneous notification of the institution's procedures for the accused and the accuser or victim to appeal the result of the institutional disciplinary proceeding.

(12) Nothing in this Act shall be deemed to prevent the temporary suspension of a student pending an investigation.

(13) Any student or student organization whose rights under this Act have been violated may bring an action in any State Court of competent jurisdiction.

(14) In an action brought under this Section, if the State Court finds a violation of this Act, the Court shall award the aggrieved person or student organization compensatory damages, reasonable court costs, and attorneys' fees, including expert fees, monetary damages of not less than the cost of tuition paid by the student or on the student's behalf to

the institution of higher education for the semester during which the violation of the Act occurred, plus monetary damages of not less than the amount of any scholarship funding lost as a result of the campus discipline, and any other relief in equity or law as deemed appropriate including, but not limited to, a de novo rehearing at the institution of higher education, in accordance with this section.

(15) A person or student organization must bring suit for violation of this Act not later than one year after the day the cause of action accrues. For purposes of calculating the one-year limitation period, the cause of action shall be deemed accrued on the date that the student or student organization receives final notice of discipline from the institution of higher education.

(16) This Act takes effect on [DATE] and applies to all disciplinary proceedings beginning on or after that date.