

SB 2150

Interim Higher Education Committee

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Good afternoon, Chairman Sanford and members of the committee. 2015 Senate Bill 2150 required the North Dakota University System (NDUS) and its institutions to implement disciplinary procedures for students and student organizations and provide a report on that implementation. I can report the system has implemented the procedures required by the bill, and institutions have updated their procedures to align with system policy and are acting in compliance with the policy.

After SB 2150 was signed into law and codified as N.D.C.C. § 15-10-56, the NDUS undertook a comprehensive revision of State Board of Higher Education Policy 514, regarding disciplinary due process. The result of that process was a policy that complies with the requirements to allow advocates to fully participate on students' behalf in suspension or expulsion proceedings and allow the right to an appeal on various grounds for at least one year, among other provisions.

The task force that undertook the policy revision incorporated the statute's provisions into the Board's due process policy while also aligning with the guidance offered by the Department of Education's Office of Civil Rights for compliance with Title IX. As a result, the current policy strikes a balance between ensuring a non-discriminatory environment for campus stakeholders and providing procedural due process that ensures fair treatment of students and student organizations involved in campus disciplinary proceedings. NDUS institutions continually strive to uphold both of these objectives as they respond to reported instances of misconduct.

Additionally, legislation based on this bill is progressing in six states (VA, GA, WA, MA, TN, UT).

**NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION
POLICY MANUAL**

SUBJECT: STUDENT AFFAIRS

EFFECTIVE: September 30, 2015

Section: 514 Due Process Requirements for Student Conduct That May Result in Suspension or Expulsion

1. Applicability. This policy applies to student conduct proceedings, not involving academic misconduct, which could result in the suspension or expulsion of a student or the suspension or removal of institutional recognition for a student organization. Each institution's conduct procedures must include the minimum requirements set forth in this policy. For student conduct proceedings based on allegations of Title IX violations, all involved students will have equal rights under this policy.

2. Definitions. For this policy:

- a. "Advisor" means either an attorney or non-attorney advocate who advises a student or student organization during the conduct proceedings.
- b. "Appeals authority" means the individual or individuals appointed by an institution to consider appeals.
- c. "Fully participate" includes the opportunity to make opening and closing statements, to examine and cross-examine witnesses, and to provide the student or student organization with support, guidance, and advice.
- d. "Hearing officer" means the neutral individual designated by a campus to conduct the disciplinary proceedings, whether alone or as a member of a panel.

3. Right to an advisor. During student conduct proceedings, a student or student organization has the right to be represented, at the student or student organization's expense, by an advisor of its choice.

4. Notice. The hearing officer shall provide written notice to any student or student organization involved in a disciplinary process regarding an alleged violation of campus policies.

- a. The notice must identify the specific allegation against the student or student organization.
- b. The notice must be provided to the parties at least three business days prior to any hearing or deadline for a response from the student.
- c. The notice must include information about the right to an advisor at any proceeding.
- d. The notice requirement is waived if the recipient consents to a shorter notice period or for the initiation of interim measures or emergency actions.

5. Hearing. A student or student organization accused of violating campus policies shall be entitled to a hearing.

- a. The student or student organization shall be provided opportunity to present information responsive to the alleged violations.

- b. The student or student organization and its advisor may fully participate during the hearing.
- c. The hearing officer shall include relevant information and exclude information that is neither relevant nor probative.
- d. The hearing officer shall render a decision within the period designated by the campus.
- e. The hearing officer shall promptly notify the parties of the hearing outcome and applicable sanction in writing.

6. Appeal. The student or student organization shall be afforded an opportunity to appeal the hearing outcome to an appeals authority designated by the campus.

- a. The appeal must be received within the period designated by the campus.
Notwithstanding any previous appeals, campuses shall provide a method of reviewing a decision for at least one year following the original decision based on a demonstrated change in circumstances relevant to the conduct proceedings.
- b. The student or student organization's right to be represented by an advisor also applies to the appeal.
- c. The appellant shall clearly state the reasons for the appeal and shall provide any relevant information to support the appeal. The issues that may be raised on appeal include new information, contradictory information, and information indicating that the student or student organization was not afforded due process.
- d. The appeal authority must be an institutional administrator or body that did not make the initial decision.
- e. The appeal authority may consider other information directly related to the appeal.
- f. The appeal authority shall rule on the appeal within the period designated by the campus.
- g. The appeal authority may grant the appeal, deny the appeal, order a new hearing, or reduce or modify the suspension or expulsion.

7. Reimbursement. If the appeal results in the reversal of the initial decision or a lessening of the suspension, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion that had not been previously refunded.

8. Interim measures and emergency actions. This policy does not preclude the initiation of interim measures and emergency actions by an institution in response to a reasonable belief that there exists a substantial risk of imminent harm to the campus community.

9. Institutional involvement. Institutions may develop procedural elements beyond the minimum requirements set forth in this policy.

HISTORY: New Policy, SBHE Minutes, June 20, 2013
SBHE approved September 30, 2015