15.0596.04000

FISCAL NOTE

Requested by Legislative Council
03/31/2015

Amendment to: SB 2150

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$257,000		$273,000	
Appropriations			$257,000		$273,000	

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

15.0596.04000 permits students and student organizations to retain attorneys or non-attorney advocate who may "fully participate" in disciplinary proceedings that could lead to suspension or expulsion.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Amended version 15.0596.04000 would potentially expand the legal workload of each institution, particularly at UND and NDSU, for disciplinary hearings. During the 2013-2014 academic year, there were 2,757 disciplinary hearings related to alcohol (1,899), other drugs (173), violence (45), sexual misconduct (8), property damage (41), and other (3). If disciplinary hearings related to other drugs, violence, sexual misconduct, and property damage could lead to suspension or expulsion, there is the potential of about 250 disciplinary proceedings each academic year, but the actual number involving attorneys who fully participate could be far less than 250. To accommodate the expected additional workload, one additional attorney could be required.

"Fully participate" is defined to include "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." Although the amended version states that it "does not require an institution to use formal rules of evidence in institutional disciplinary proceedings," the amended version also requires the institution to "make good faith efforts to include relevant evidence and exclude evidence which is neither relevant or probative" - which would require the establishment of evidentiary guidelines for the proceedings and a law-trained presiding officer (such as an administrative law judge) to rule on evidentiary issues and preside when attorneys are representing students.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

One additional attorney could be required, dependent on the caseload volume. The workload will be carefully monitored and staffing adjustments made accordingly.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Additional state appropriation required to cover the cost of up to one additional attorney position, including salaries, benefits, operating and equipment.

Name: Laura Glatt

Agency: ND University System Office

Telephone: 7013284116

Date Prepared: 04/01/2015

15.0596.03000

FISCAL NOTE

Requested by Legislative Council
02/10/2015

Revised
Amendment to: SB 2150

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$616,000		$657,000	
Appropriations			$616,000		$657,000	

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Under amended version 15.0596.03000 students would be permitted to retain attorneys during any disciplinary proceeding regarding alleged violation which could lead to student being expelled or suspended.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1: This bill will potentially expand the legal workload of each institution, particularly at UND and NDSU, for the administrative hearings. Attorneys will now be authorized to fully participate in disciplinary proceedings, which may require the presiding officer be a law-trained administrative law judge.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated cost for salaries, benefits, operating and equipment for following new positions: one attorney; and, one administrative law judge. The number of potential cases could be reduced to less than 50 per academic year.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Additional state appropriation required to cover added estimated cost for salaries, benefits, operating and equipment for following new positions: one attorney; and, one administrative law judge.

Name: Laura Glatt

Agency: ND University System Office

Telephone: 7013284116

Date Prepared: 04/01/2015

15.0596.03000

FISCAL NOTE
Requested by Legislative Council
02/10/2015

Amendment to: SB 2150

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$830,000		$880,000	
Appropriations			$830,000		$880,000	

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Under amended version 15.0596.02003 students would be permitted to retain attorneys during any disciplinary proceeding regarding alleged violation which could lead to student being expelled or suspended.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1: This bill will potentially expand the legal workload of each institution, particularly at UND and NDSU, for the administrative hearings, as well as potentially appeals to the district court.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated cost for salaries, benefits, operating and equipment for following new positions: one attorney; one administrative law judge; and, one court reporter. The number of potential cases would be reduced to less than 50 per academic year.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Additional state appropriation required to cover added estimated cost for salaries, benefits, operating and equipment for following new positions: one attorney; one administrative law judge; and, one court reporters.

Name: Laura Glatt

Agency: ND University System Office

Telephone: 7013284116

Date Prepared: 02/11/2015

15.0596.02000

FISCAL NOTE
Requested by Legislative Council
01/08/2015

Bill/Resolution No.: SB 2150

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$2,500,000		$2,645,000	
Appropriations			$2,500,000		$2,645,000	

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Permit students and student organizations to retain attorneys during any disciplinary proceeding regarding an alleged violation, except for academic dishonesty; permits any student who is suspended for more than ten days or expelled to seek appeal in district court.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1: this bill could significantly expand the legal workload of each institution, particularly UND and NDSU, for the administrative hearings, as well as potentially a significant number of appeals to the district court.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated cost for salaries, benefits, operating and equipment for following new positions: three attorneys; three administrative law judges; and, three court reporters. Estimate is based on about 1,000 hearings per semester currently and assumption that some would opt to pursue legal representation and/or appeal.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Additional state appropriation required to cover added estimated cost for salaries, benefits, operating and equipment for following new positions: three attorneys; three administrative law judges; and, three court reporters.

Name: Laura Glatt

Agency: ND University System Office

Telephone: 7013284116

Date Prepared: 01/20/2015

2015 SENATE JUDICIARY

SB 2150

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
1/26/2015
22486

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature DPenrose

Minutes: 1,2,3,4,5,6,7,8,9,10

Ch. Hogue: We will open the hearing on SB 2150.

Sen. Ray Holmberg: Sponsor, support (see attached #1).

Ch. Hogue: Thank you.

Sherry Warner Seefeld, concerned parent: I am a teacher and President of Family's Advocating for Campus Equality, but today I am here as a mother (see attached #2).

Ch. Hogue: Thank you. Further testimony in support.

Sen. Ray Holmberg: Support (see attached #3,4,5,6). I have one suggestion on the bill for clarification. In the first section, it talks about right to counsel for students and organizations, and it says that the student has a right to be represented, at the student's expense by an attorney or non-attorney advocate. The person whom we worked with, who worked on the NC law, you should make it clear in the bill that the student, not the campus, that decides whether or not it is a trained attorney or a non-attorney advisor advocate. They were a little worried that that would open grounds for some hanky-panky and I think that our University System, if we pass this, will do everything they can to follow the dictates of this particular measure. There is a fiscal note on this and you have that there. If you determine to pass this bill, and I know you will look at it, you will hear from the University System, they may have some suggestions that are positive and should be considered. When I put in a bill, it's no longer mine it belongs to the Legislature and you, as the committee, that's looking at it, so there is no pride of authorship; particularly when it was authored in NC. The fiscal note that is on there, is something that people in

the appropriations committee would have to deal with, but I hope that you can do what you need to do make this bill very good. There are many other people to testify today that want to testify.

Ch. Hogue: Is the NC literature, was that in response to the Duke Lacrosse Team.

Sen. Holmberg: Yes, it had to do with an "event" that occurred in NC that was one of those situations that are looking back hard to defend. We had the Rolling Stone article a couple of weeks ago, which was a situation in Virginia.

Sen. C. Nelson: Looking at the fiscal note, we're well aware that occasionally we run into "death by fiscal note". It seems that $2.5 million dollars is quite a large number. Also the estimate of a 1,000 hearings per semester seems a bit high. I have greater confidence in our students than 1,000 of them going awry for semester. What's your opinion on that?

Sen. Holmberg: I have heard of death by fiscal note. I would never accuse an agency of death by fiscal note, but if this fiscal note gets to our committee, we will certainly take a strong look because you wonder does the fiscal note say that there are a lot of things we're doing that we're going to have to defend ourselves on. You need to determine, the Senate Judiciary Committee first and foremost, what is the best language if you believe that these students should have a right to have an attorney there who can speak up for them; an attorney or advocate who can speak up for them.

Sen. Connie Triplett: Support (see attached #7). You are all aware that I have had some issues with the university in my private life. I am not here to talk about that today. I am going to use some of the things that I have learned from that experience, which is to say, reading the State Board of Higher Education Policy Book from cover to cover quite a few times to talk about some of the issues and staff terminations and I think as you get to this, you will see very close parallels with the issues of students that have been described here for student discipline. I also want to say that I have been paying close attention to the State Board of Higher Education in recent months and I am pleased by the progress they are making. There was a press release from last week that they have put out a new job definitions, if you will, for the next chancellor which I think begins to resolve some of the issues between the system and university institutional presidents and the harsh line that has been drawn in the past. While my testimony may sound critical, I also wanted to acknowledge that work is being done. I'm going to

give you some basic background on the system authority and the concept of due process. This is particularly intended for those who are not attorneys (read testimony).

Ch. Hogue: Thank you.

Tony Weiler, Exec. Director of the State Bar Association: I represent 2,900 licensed ND lawyers; several are in this room today that do not agree with our position, I'm sure. That has a tendency to happen. There wasn't anonymity on the board support of this; however, it wasn't lost on us that the Chief Justice stressed the important tenement of due process in his state of the judiciary, and the Board did believe that it was important for us to support this on due process grounds. The belief that everyone has a right to counsel; not only a right to counsel but a right to counsel that can participate fully in the hearings. We believe that that should be a necessary tenement of due process. Sen. Triplett laid out due process in great detail for you. We support the bill. We sometimes take pause when there are words such as non-attorney advocates. One concern that we have and are seeing more often is the unauthorized practice of law. It's becoming more difficult to define and it is certainly difficult to enforce. We don't take a position that indicates that that must be deleted, but it is something we have some concerns about. We believe that there should be a right to an appeal to a district court; we support that tenet of the bill. With respect to the penalty phase, we take no position and leave that up to this committee and the main body to work out.

Ch. Hogue: Thank you. Further testimony in support.

Aaron Weber, NDSU Student Government: Support (see attached 8).

Sen. Armstrong: When you are talking about student government and those situations, do they make any distinction between minor violations and major violations. I assume that a lot of these matters that go through these campuses are like "a beer can in a hallway of the dorm" vs. the major violations. Are there distinctions between those two?

Aaron Weber: There is nothing that I am aware of, the conflict resolution board hearings. Anything that would violate the NDSU code of conduct would go to the conflict resolution board and from there I'm not aware of any distinction they provide.

Sen. C. Nelson: Is there more than one resolution that went around. I have the one for NDSU.

Aaron Weber: I believe that Sen. Holmberg passed out the one from UND. I can have their governmental affairs get that to you if you would like. On that topic, we had some problems. UND was supposed to be here this morning. They were going to bring the written testimony which I don't have in front of me.

Ch. Hogue: Do any of the student governmental organizations have, rather than anecdotal stories, do you have any data that would tell the committee, how many of these cases are out there. What are the results? Any of that information.

Aaron Weber: I can talk with the student court and the chief justices to see what kind of data they had. These hearings are typically confidential so I don't know what kind of information they would be able to release. I can try and find some data for the committee. At this time, I can't speak to any specifics.

Ch. Hogue: Thank you.

Janelle Moos, Exec. Director of CAWS ND: Support (9).

Sen. Armstrong: From your perspective, these hearings happen much quicker than criminal proceedings happen. They don't happen necessarily any quicker than civil restraining orders or things of that nature. Is the timeline of these hearings a factor for victims in these cases? We talk about the timeline being a factor to the University and to the accused student, is it factor for the victims in these cases. Is it a benefit for these things to happen quickly for the victim or would it be beneficial if they slowed down a little bit.

Janelle Moos: It's going to be different for every victim of sexual assault. We know that a lot of victims don't come forward right away to report the sexual assault. I think there is a lot of delayed reporting; obviously, just because they may be concerned about what they were doing that night or what they may have done to potentially contribute to the assault. We would be willing to work with you in terms of what would be a reasonable timeframe; it's hard to say that every sexual assault victim is going to have the same timeframe in saying whether or not two days or three weeks would be reasonable for them. I think that whatever process we can work towards in terms of making it more amenable to all sexual assault victims.

Hog: Thank you. Further testimony in support of SB 2150. Testimony in opposition.

Maury Sagsveen, Chief of Staff in the Chancellor's Office, NDUS: Although appearing in opposition to the bill, we want to make it clear upfront that we're not in opposition to the concept of the due process issues in the bill. We are opposing the bill as written because of certain provisions in the bill. Last week, representatives of the University System had a very productive meeting with the bills' sponsors. There's a very good dialog and we discussed the issues about the due process, and the commitment of the university system to work with the bill sponsors to come up with language that would be mutually agreeable. I would like to comment on the fiscal note and the implication that there may be death by fiscal note. I worked with Laura Glatt, the vice-chancellor for administrative affairs to try to develop a fiscal note, and it was very difficult because of the uncertainty of the bill. In the fiscal note, we estimated or assumed that the bill, if passed, may require the hiring of an additional lawyer at UND, another lawyer at NDSU and an additional lawyer to represent the other institutions; because if one side has an attorney, there may be a necessity for the other side to have an attorney. If you have two law trained people arguing with each other in a hearing, it may be necessary to have an administrative law judge in that particular hearing, so you're going three to six. If you are appealing to the district court, the hearings may have to be transcribed by a court reporter; so you would have to add a court reporter at UND and NDSU and other institutions. Now you go 3-6-9 additional FTE's. We put that in there because we don't know what the requirements may be but wanted to alert in the fiscal note that those may be the requirements. There was a comment about the number of hearings that are held in the University System. In the academic year, fall of 2013 through spring 2014, in the system there were 3,123 complaints. Of that, there were 2,757 judicial conduct hearings. Of those hearings, approx. 69% were related to alcohol (1,899) of the total hearings. Of the total hearings, about 1.6% had to do with violence on campus and .2% had to do with sexual misconduct. The reason that I mention that is that there a large number of the hearings have to do with alcohol and other drugs. A very small number have to do with sexual misconduct and violence. Those are possibly the ones that the committee and the bill sponsors would like to focus on to make sure that there may be additional due process provisions built in for those related issues. I'm not an expert in this type of process because I've never handled one, but we do have people here who have much experience than I do. Chris Wilson is the general counsel for the NDSU, Cynthia Goulet is the general counsel for

the university system office and also represents a number of institutions and also Becky Lamboley is the director of student affairs in the office. I'm going to ask them to begin with Chris Wilson to comment based on his expertise.

Ch. Hogue: I am assuming that the committee is going to have some questions, and perhaps the people coming behind you will be able to answer them. My first question, one thing I noticed in the Bill, so we had the primer from Sen. Triplett on due process rights. As I read this Bill, we afford the same due process to the organizations as we do to the students. I'm wondering if there is something in the State Board of Higher Education policy or in the law that says that the organizations get as much due process, or the same due process as a student whose status is in question.

Maury Sagsveen: The Board of Higher Education has adopted a policy on due process and to further implement that policy, the institutions have further refined that to have more detailed policies.

Ch. Hogue: You said there were 3,123 complaints and .2% was related sexual assault/misconduct cases.

Maury Sagsveen: There were 3,123 complaints and of those 2,757 hearings and of the total hearings, .2% had to do with sexual misconduct; not of the complaints, of the hearings.

Ch. Hogue: About 5 cases then.

Maury Sagsveen: There were 8 cases.

Sen. Grabinger: You mentioned that you have your own policies at the State Higher Ed board has their policies, and then the universities. Can't we avoid this, can't the state board of higher education change their process to allow somebody that is accused to have legal representation and that would suffice and take care of this. Why do we need a state law? Isn't this something that you could do and allow that due process to happen.

Maury Sagsveen: The answer to that is yes. The board has not had a request to amend the policy and to the best of my knowledge, UND and NDSU have not had similar requests. We can do that. Speaking as the chief of staff of the system, I'd be glad to sit down with anybody who wants to have proposed amendments to the board policy. What is done with the board, is that we work on the policy, we submit it to the board for a first hearing, and the

board considers it, we lay it over for a month, and then the board has a second hearing and so at any time in the process, somebody who is interested in amending the board policy can speak with us before, help in the drafting process, submit it, speak to the board on two separate occasions; to the best of my knowledge we haven't had a request to do that.

Sen. Luick: Don't the universities already have attorneys on retainers to handle cases that are brought up. Why in the world would it cost that much more money for a university to take care of that few a number of cases that we're talking about here.

Maury Sagsveen: UND has three attorneys representing UND and Lake Region in Devils Lake; NDSU has two attorneys representing NDSU and Wahpeton, including Chris, and in the system office we have three attorneys representing the other seven institutions. Most of the time they are not involved in the disciplinary process. Those attorneys are working on contracts, intellectual property, and a variety of institutional issues. The disciplinary proceedings often go on without too much involvement of the systems' attorneys. If this bill is passed in its present form, so that if there are 2,757 hearings and there are attorneys in all of those hearings, it would overburden the system that we have. The attorneys now, in addition to their normal workload, which I know that they are working at 100%, they would be asked now to participate in an unknown number of 2700 hearings.

Sen. Luick: We really don't know what the number of those serious violations is, at this time that would basically be that the individual would want or the university would want legal representation at that hearing.

Maury Sagsveen: We have an idea about the serious hearings; the hearings about serious offenses. We don't know if the bill is passed and the past and present form, how many students will be requesting or bringing lawyers to speak on their behalf for relatively minor offenses. That's what we don't know. If the bill were crafted so that it would focus on the more serious offenses, we would have a much better handle on the number of cases that would go to a hearing with an administrative law judge or could be appealed to the district court.

Sen. Luick: Wouldn't the university's administration be comfortable handling those cases, even if there was representation in the room by that student, even if it weren't a serious violation. Would they need to have counsel there on the university's behalf; why would you even put counsel in there even if the

student did have an attorney present? If you weren't going to have it in the first place, why would you add it if that counsel from the student was present.

Christopher Wilson: I can answer a lot of these questions with my testimony.

Sen. Armstrong: If we're talking about what we're going to change it to, I just want to be clear on how it works now. Currently, from testimony we've heard, is an accused student can have a lawyer in the room but they can't speak, right.

Maury Sagsveen: Yes.

Sen. Armstrong: But the university determines which hearings they want their lawyer to participate in. We heard testimony that a lawyer from UND has participated in at least one hearing, so the university determines which hearings at which a lawyer can participate in or not.

Maury Sagsveen: I'm aware of the case you're talking about and I have reviewed background information on that case, but I'm not intimately familiar with that case, nor is the attorney for UND here, Julie Evans.

Ch. Hogue: Thank you. Further testimony in support. I see that we have your prepared testimony, and that's great.

Christopher Wilson, General Counsel at NDSU: Support (see attached 10).

Ch. Hogue: I wanted you, going off of Sen. Armstrong's question if you could for a moment, because I'm not familiar with the process. I would like you to walk the committee through how this process today unfolds. One example, which seems to be the majority of the cases, is an alcohol-related infraction and the other relates to sexual misconduct. When someone makes a complaint, how does the University react?

Christopher Wilson: Well there is a complaint brought to the Judicial Affairs office; there might be variance between the various institutions, State Board of Higher Education policy, 514, mandates that each institution create a disciplinary process that comports with due process standards of the federal government. Regardless of the charge, there is an investigation. If there are going to have charges brought up, then the student is given notice of the charges. Next, there is a preliminary hearing depending on the severity of the crime, the processes involved include a lower level 1 would probably go

straight through to some sort of simple hearing. A more complicated one would start with some sort of public preliminary hearing where the student is advised of their rights with regard to an option for maybe a multiple of choices; sometimes they can choose between whether or not they want to have the case heard by an administrator from student affairs who is knowledgeable about this type of case or alternatively they can choose the judicial board, which is a board made up of students. I can't speak for all the institutions. I only represent two. Then they go to a judicial board, which is made up of students that are trained at the beginning of every year on how to conduct judicial hearings. Regardless, that is how the facts are determined. The student, throughout the process, does have the option of having an attorney. Right now the student who is charged does have the option of having an attorney in attendance during the hearing process. The attorney cannot participate. That is really the crux of what we are getting at. We're trying to find out whether or not the participation is different from just having an advisory role. After the hearing was conducted, a determination is made with regard to responsibility and then sanctions are imposed. The penalty again, at least in regard to NDSU depending upon the nature of the severity of the sanctions there is two levels of appeal. For the more serious cases, there are two levels. I'm not familiar with the case at UND that was referenced earlier. I know there was a reference made to the fact that the investigator was, in fact, also the prosecutor in that case. Title 9 regulations mandate that the investigator and the hearing officer have to be different. That issue has been remedied at the federal level to the extent that it existed before.

Ch. Hogue: So the investigator is a member of the faculty or the staff.

Christopher Wilson: Student affairs administrator.

Ch. Hogue: But the judicial board, which is the person deciding, is composed of the students.

Christopher Wilson: Should the student choose that option. The student can also choose a different hearing officer who is an administrator. That is how it works at NDSU. In regard to Sen. Armstrong's question with regard to when does an attorney participate in the hearing process. From the university side, we only participate when there is an attorney involved on the student side. Without attorney participation the entire process is run without attorneys. In that case, the witness indicated that there was, in fact, an attorney was present during that case, which probably precipitated the use of attorneys. I can't speak to that. I'm just speculating.

Sen. Armstrong: Is the university attorney allowed to speak at the hearing.

Christopher Wilson: No. NDSU policy says "no". The provision says that the attorney is there to advise the client from the student's perspective. That if the attorney violates that rule, then the hearing officer is allowed to warn the attorney or ultimately remove them should the same activity continue. That same rule applies to the attorneys for the university. That is what it says at NDSU.

Sen. Armstrong: So that might be campus by campus.

Christopher Wilson: I can't speak to the other campuses. That's not a board policy that says that.

Ch. Hogue: In regard to subsection 2, provides these due process rights to the student organizations. Do you have any data on how many times it's the organization that's the subject of the investigation hearing? Is it the same kinds of infractions, like the alcohol problems?

Christopher Wilson: I didn't prepare for the student organization materials. It's my understanding that there were going to be some amendments made to that section that may deal with the student organization's section as well as the judicial appeal process. Generally speaking, it is the same type of behavior, mainly alcohol, partying, that causes problems with the student organization and it creates different evidentiary problems, because the students themselves might also be subject to discipline as well. The same witnesses that may are going to be charged individually may also be charged against the organization. It creates different evidentiary problems as against the student organization. Right now, 514 of the State Board of Higher Education policy, speaks to student due process. I believe NDSU policy also has a procedure in place for how to deal with student organizations, but it's not the same as with students.

Ch. Hogue: It just strikes me that the organizations themselves don't have necessarily the same liberty interest in terms of being free from unfair accusations. Even their existence, I suppose is not the same as a student's right to pursue their academic degree. I know you are here on behalf of the university, is it your contention or concern, do the organizations need the same due process rights as the individual students do.

Christopher Wilson: Generally speaking I would probably say "no". Student organizations, as far as I know, have no federal case that indicates that the due process rights are guaranteed by the 14th amendment apply to student organizations as well as students. I haven't done any research on that. I think that the case. That being said, universities have lots of different constituency and different facets; all of which make the universities a wonderful place to be and to be educated. Student organizations are a critical part of student life; be it Greek organizations, the chess club, or student government. All of those groups are important aspects of the co-curricular activities on campus. Students learn to be leaders, work together to achieve administrative goals as far as working together, work with a budget, etc. We don't take discipline against a student organization lightly; it is an important aspect of the student life. From strictly a legal point of view, do they need or have the same rights, I would have to say legally no.

Ch. Hogue: If an investigation is initiated, is there something in the initiation that tells the student your status as a student is at risk. This type of violation could trigger an expulsion. Do they know that up front?

Christopher Wilson: At the start of the investigation I do not think there is; probably not until the notice of charges. This bill doesn't change that. This bill does not change anything related to the internal processes of how the student conduct process is maintained. It simply allows an attorney to be present, whether a notice provision, if it doesn't exist now it wouldn't exist then.

Ch. Hogue: If the committee, the Senate or Legislature was of a mind to say that we don't want attorneys participating in all these cases, nor do we want to give that option. If we wanted to limit it to save the most serious infractions whether they were sexual assault or some other violence; would the committee or Senate go about amending this bill?

Christopher Wilson: It certainly would go a long ways toward remedying a lot of the financial issues associated with this because it would be a much more finite area. I've seen other states, I came from Ohio, there is a 12-19 process, and it's a separate process for what is called "crimes of violence". It is a separate subset of crimes; the most egregious violent crimes. There are definitely ways and we would work on this. We had a really productive conversation with a couple of the sponsors. We're happy to work with this. No system is perfect. I'm just not sure that what is currently proposed is actually meeting the bill. If we complicate the student process too much, it doesn't give the universities flexibility to actually deal with our primarily role

which is to actually keep the campus safe. The more complicated we make the process, the more difficult it may be for us to get people who are actually threats to our campus and our students off camps. I know there are going to be cases where something happens that leads to a bad result. That's where we fix the problem, not that we make it more difficult to get dangerous people off our campus.

Sen. Grabinger: You stated in your testimony that the process will cause unneeded and expensive complications. Do you have any concrete information that will back that up?

Christopher Wilson: I don't. We would only be the 2nd state in the country to do this. As I mentioned, North Carolina's law only went into law last year. I spoke with the attorney down in NC, but she didn't have any hard data yet. I think it was the middle of 2014 when their law went into effect. That's not enough time to draw upon.

Sen. Grabinger: Do you know if the State Board of Higher Education has taken up this discussion in their meetings at all; I'm surprised because this can't be the first time they've heard about this and why they haven't come with a recommendation or suggestion other than they're waiting for an amendment from someone else. Have they looked into this, are they going to bring an amendment.

Christopher Wilson: I represent NDSU and NDSCS, so I can't speak to that. I don't think there has been a board meeting since this bill was introduced. I don't know that they have had an opportunity to discuss it.

Maury Sagsveen: I don't.

Sen. C. Nelson: How broad is the definition of disciplinary proceedings.

Christopher Wilson: My understanding is that it would encompass everything that our disciplinary hearings.

Sen. C. Nelson: Academics as well. If somebody is booted out of their leadership role in an organization because of grade point average went below a certain grade, how broad do you go. I know that it used to happen that way; if someone's grade point average went before 2.0 they were automatically removed from their sport, sorority, cheerleader because they had to get their grades up. It didn't matter what the circumstances were and you had to go

and fight that at J Board. Hopefully things have changed in the last 30 years. I know that to be a fact.

Christopher Wilson: I'm not aware of anything in the judicial code that relates to GPA. When you attend the university, there are a variety of groups that you can belong to. Each one of them has separate disciplinary rules. So a student athlete, if an incident happens, the coach has absolute discretion whether he would suspend the player or not. That is one level of discipline; that's not the University's discipline. The university also has separate discipline for that institution and of course there is criminal conduct. With regard to academic matters, this bill carves out academic misconduct. Falling before the GPA, that wouldn't be a disciplinary matter nor would that be an academic misconduct matter. I don't know what the minimum threshold is for maintaining your status. That would not fit into either of those hearing processes. Our academic hearing process is separate from our disciplinary process that is handled through our academic side of the house, cases like plagiarism, and along those lines are managed by faculty who have greater expertise in those area that are student conduct people. One other thing, I had heard that this bill might be amended. I don't know if that is the case or not. To the extent that it's not amended, then we have a judicial appeal process where this would have significant problems with it in that it violates federal law. It was mentioned that this bill was based on the NC statute, but I don't believe that the NC statute had this judicial appeal process in it. As it's written right now, the judicial appeal process requires the university to turn over the record of the judicial hearing to the district court. That hearing record will have the names of victims and student witnesses which are protected by the Family Educational Right to Privacy, which is commonly known as FERPA. It may also violate the violence against women's act. Right now it would need to be fixed, so that in order to maintain that kind of judicial oversight there would have to be a methodology for a protective order put in place before those records can be turned over. Short of that, I fear the first institution that is brought before this, would actually get an injunction hearing from the Dept. of Education. I suppose the DOE might try to find a way to bring an injunction against the institution trying to turn over the records, pursuant to the statute. It's happened before, at Miami University, a state court said that they had to turn something over and the DOE brought over an injunction against Miami University in 2002 in federal court prohibiting Miami University from turning over records in accordance with the state law. There are legal complications there with that provision.

Sen. Casper: Could you add some clarity to the role of the attorney, who is he representing if the university chooses to have him in these hearings; currently if the university chooses to have him in this hearing under what is here in the fiscal note, the attorneys that they are prospectively having in the hearing, or the administrative law judge push. Why is that added in here, as opposed to who is currently conducting the hearing now. If we are going to have an ALJ, who does that ALJ represent?

Christopher Wilson: A lot of these details are unknown. The question is really one of volume and that is unknown at this time. If this is, in fact, one case per year that is 30 minutes or an hour, certainly our internal offices can absorb that time commitment as they currently exist. Our problem is that we had 2700 cases per year. We have an unknown number of those that are going to start using attorneys perhaps, and the difference between an attorney advising and whispering into his client's ear during the hearing, which is as I mentioned is the national norm and the attorney standing up and making arguments, making motions, and attorneys have a tendency to complicate things. I'm worried that that will take away the educational value from the bulk of these. Remember, a lot of these are alcohol, minor in possession, where there is an educational benefit to the kid coming and being called to the mat and having to admit what he did wrong and taking the punishment and going away. I see that being lost in the event that an attorney steps up for them in those cases. If you have enough alcohol violations, it can be a suspension, so there could be a minor, 1 or 2 and might not be suspendable now, but there could be a motive for the attorney to be hired before it gets to the level of suspension for the alcohol violations.

Sen. Casper: The attorney that would be present that is not the attorney of the accused, who does that attorney represent and why are they there. Does the ALJ that would be in place under the fiscal note, is that replacing the current board of administrators and students; which are currently the prosecutor and the decision maker.

Christopher Wilson: Right now it's not the prosecutor or the judge. Whatever happens, that's not the process we follow for serious cases. The university would have to put on its case. If there's going to be an attorney on the defense side, the university's case, which would be put on by the investigator, whether or not they have sufficient legal understanding to represent the institution, I don't know. We are anticipating that an attorney would be involved in those cases to counter the legal involvement on the defense side. Once again, I don't know if a student judicial body, which does a good job,

would be sufficient to handle two lawyers going back and forth at each other, which means we would need an ALJ. For purposes of FERPA, we would still want to maintain this hearing inside the university, so that they would all be designated as legitimate school officials with a legitimate educational needs so that they can hear the necessary testimony and see the documents. It would still be an internal hearing. The question would simply be whether or not our existing personnel would be sufficient from a legal point of view to handle an attorney on the defense side.

Sen. Luick: Do you feel it would be possible for the university system to put on a fast track, some sort of resolution that could be identified and carried out before or instead of this particular state law that would be suffice to handle this.

Christopher Wilson: As far as the process goes and how quickly the state board could do it. That would be a question for Mr. Sagsveen. I would be happy to meet with the sponsors of the bill to figure out what the goal is. Is the legislation, as drafted right now, the best way to achieve the goal or is it the rehearing process where let's assume a case happens. At NDSU, our rehearing process doesn't have a timeline on it. Because our hearings tend to be fairly quick, Title 9, as a matter of fact, federal law requires our sexual assault or sexual misconduct cases to be largely wrapped up in 60 days. We use a lower standard. We use a preponderance of the evidence standard as required by Title 9. We use that same standard regardless of whether it's a sexual misconduct case. That's legally appropriate. We are not a criminal court. The limit of what we are deciding is whether or not a student can in fact continue to attend our institution. That is the sole limit of what our hearings are. We don't take away any other liberty interest. Given the limitations of our process there are going to be mistakes occasionally happen. The question is, will an attorney be the best way to fix that potential issue, or is it the rehearing process like NDSU has that allows an unlimited time period for saying we have new evidence that's uncovered, that substantially shows the likelihood of a bad decision. I believe that is probably the better avenue to go and to make sure all the institutions have such a process. Can we fast-track something, the process would go to Mr. Sagsveen. What is it that we would want to fast-track? What is the goal that we could all collaborate and agree to, saying this is the best fix and this is how we get it done?

Maury Sagsveen: We have a board meeting on January 29, 2015. We will be talking about this issue and the next board meeting is 2/26/2015. If there was consensus to move forward it could be on for a first reading on 2/26/2015.

Ch. Hogue: Thank you. I know that you have been meeting with the bill's sponsors but I think you hear Sen. Holmberg acknowledge that the bill is owned by this committee. Mr. Wilson, we would like you to provide us with an amendment that would describe for us the most serious cases where we would, where the bill might permit full lawyer participation. I don't know is that would be sexual assault cases, I don't know how to define that but I think the committee would be interested in seeing something like that. Not that you support it, but what would that look at. Further testimony in opposition to SB 2150. Any neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
2/9/2015
23519

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes: 1

Ch. Hogue: We will take a look at SB 2150. We'll have Sen. Armstrong explain his amendments.

Sen. Grabinger: I like what you've done here in the amendments and I agree with it but should it be spelled out how many times they can appeal under the circumstances, to we need to be more in depth in issue. Or is that something they already have policies that govern that, so that we don't need to step into that realm.

Sen. Armstrong: I think it's assumed that it's only going to be one appeal. If after a one year, if there isn't any new evidence, it's very unlikely that after two years there will be then. Explained the amendments (see attached 1). One issue relates to not being able to have everyone there for every single open container violation. The universities in ND don't really do 10 day suspensions. The smallest suspensions they give are a semester or expulsion. So this would only apply to those types of hearings. Just by that qualifier in here, it will be for a small number of cases but they will be more serious cases. One of the problems with these hearings as far as due process goes, is that they fast track; happen very quickly. Then the appeal happens very quickly. The only way you can get back in is if there is newly discovered evidence. On the case that was the litmus for this, the victim got charged with a crime for falsifying information to law enforcement and the university said that was not new evidence. So there was one particular person at one particular university who obviously had control of the process. We gave them a blanket right to an appeal within a year instead of a rehearing. The reason for not having a blanket right to a rehearing is that you have to protect the victim too. A year later, if you are through the criminal case in 8 or 9 months later, and say that you have evidence that people lied, so you have evidence that whatever

happened, then you can do it. You can't do a blanket rehearing a year later; that would be unfair to the victim in those cases. The vast majority of these cases there is usually a reason for the sanction that is given. So you take away the university being able to tell you that you an appeal, you get a blanket right to an appeal, but you don't have to drag the victim and witnesses back in, doing it as an appeal instead of a rehearing in a year. One of the things that will come up again if this bill makes it out of committee, it might come up on the floor and come up on the House side, is that they want an appeal to district court. When we've talked to people, it is very problematic in how you do these hearings. In order to preserve an appeal for district court, different things have to happen. The other answer was in the original bill, there were fines and lawyer fees and all the words that sound really harsh, etc. This is a rehearing back to the same group you had. The reason that I picked that is because you already know every university has one and there are usually students on it too. We talked about where you appeal the case if you are going to the university. Do you set up a different body, do you require them to set up a different body. Whenever I have a rehearing, I prefer to go back to the judge who understood what was going on to begin with, when you are going back with new information. We put student organizations in here for only when they get suspended or expelled from campus. I think bill is workable; this will probably take the fiscal note away which will help. I don't think the fiscal note would exist anymore. I think the fiscal note was bunk. I think this will take it away and I think it's a good step in the right direction.

Sen. Casper: The only thing I would add to that is that we also added in there that if the institution may reimburse the student. We talked about tuition and fees and how that process worked, if they were suspended for a time and new evidence came to light at the appeal and found that they either should have gone a different direction with that originally or if they are readmitted back to school, they wouldn't be out some of that expense. I am in favor of leaving in the language regarding the organizations; going beyond the individual and for the groups on campus. I think some of that may involves housing to a degree. So if something takes place and they are going to be removed and kicked out of their housing on campus, I think they should have an opportunity to be represented.

Ch. Hogue: I have always thought that the student organizations should not be a part of this bill at all. The reasons that drove this bill were the individuals who said they were being deprived of either my reputation or my opportunity to participate in this educational process. I should have some due process rights which would include the right to be represented by counsel, who can

participate. I got that, understandable; 3,000 cases- 90% of them are minor alcohol infractions but for those 10% I don't have a problem with that. When you go to student organizations, you really have to think about the purpose of those organizations. The organizations are there to provide some improvement to the educational process for the students. They don't have a right to be educated; they don't have a right to be on that campus, unless the university thinks they are providing some valuable service to the students. Their reputations are not really relevant in a due process hearing. The next thing, and the most important thing that we do here, people get in front of that podium and they talk about problems that they want us to solve; whether it's human trafficking, etc. Not one person gave us an example where an organization had been deprived of any due process on one of our campuses. We're really deciding to address something that we don't have any testimony that tells us that this is a problem. My basic philosophy and we should have written it on the board at some point, tell us what the problem is, define the problem. We cannot solve problems unless we know what they are. No one testified that this was a problem. The third reason why student organizations should not be a part of it is you have to give the University some discretion to manage those organizations, because they take on a life of their own. I just don't support the idea that they need the same due process rights as an individual student. Now if there is a closure of one of these fraternities, I guess that's what we are talking about, assuming that it is a student organization that runs a fraternity, the student is not being deprived of anything other than housing. They aren't going to get a hearing under this bill anyway. You can't say, well you are closing my fraternity and I am going to be out of housing. It's really got to affect the organization, not the student. Presumably in most of our cities, there is alternative housing, whether it's on campus or off campus. I think that subsection 1 addresses a problem that we heard testimony on. Subsection 2 is just asking us to try and solve a problem that nobody has told us exists.

Sen. Luick: I feel the same way. When we heard this bill, I saw that there was a problem with students here or there, they should have a right to have an attorney there, but not the student organizations.

Sen. C. Nelson: I guess I'm looking at it proactively. Perhaps they haven't had something happen but it would be nice to have our ducks in a row if something should happen that they do need to come before Jboard. There are more than sororities and fraternities. There are a whole lot of clubs; hockey, chess, rugby, all sorts of different organizations that are paid for by student funds. If something goes wrong within an organization and perhaps

the student government wants to pull them off of an authorized group and the group doesn't think so, what are the ramifications? I'm just saying let's look forward instead of waiting for something to happen.

Sen. Luick: Is it possible to sue a group.

Ch. Hogue: An incorporated entity yes, a partnership yes; I'm not sure of the legal status of the fraternities on campus, they have a national charter. Who insures them by the way against claims?

Sen. Armstrong: It is very possible to sue the groups.

Ch. Hogue: The fraternities I can tell you that there are a number of suits and it is as you would expect it. Everybody who serves alcohol is subject to our Dram Shop Act. Typically the fraternities have a party, of course they invite everybody to them on campus and somebody gets a little carried away, gets injured, and that's where the claims are typically presented.

Sen. Luick: In those cases, they would go after the student who was the instigator and the fraternity itself.

Ch. Hogue: Yes.

Sen. Luick: What happens today if they are sued?

Ch. Hogue: They have insurance that defends their civil claims.

Sen. Luick: How are they represented?

Ch. Hogue: The insurance company in all cases typically selects their counsel and defends it.

Sen. Armstrong: The organizations aren't really happy with this drafting because their concern is really the probationary status they go on before they ever get expelled; in their words "draconian probation sanctions" that they get put into. My response was we're not going to litigate every one of your probation violations. One thing that this does by putting the groups into here, I think sororities and fraternities are actually not affected by this law. By the time they start being removed from campus, usually the national chapter has weighed in. They could have hired any lawyer they wanted to go into the university proceeding and I don't think it was going to matter because their

national chapter was shutting them down for a period of time. I think this at least allows an organization a hearing before they get kicked off of campus because I don't think that is the case on every campus in ND. I know it is at NDSU, but it has been strangely silent as to whether you as a rugby club and saying you're off of campus, I don't know if you even get to go in and argue your case in front of anybody as to why you're being suspended.

Sen. Grabinger: I move the amendments.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a roll call vote. 4 YES 2 NO Motion carried. We now have the bill before us as amended.

Sen. Grabinger: I move a Do Pass as amended.

Sen. Casper: Second the motion.

4 YES 2 NO 0 ABSENT
DO PASS AS AMENDED and be referred to APPROPRIATIONS

CARRIER: Sen. Armstrong

1 of 2
TV
2/9/15

15.0596.02003
Title.03000

Prepared by the Legislative Council staff for
Senator Armstrong
February 9, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2150

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Disciplinary proceedings - Right to counsel for students and organizations - Appeals.

1. Any student enrolled at an institution under the control of the state board of higher education has the right to be represented, at the student's expense, by the student's choice of either an attorney or a nonattorney 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 disciplinary policies. This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion from the institution. This right does not apply to matters involving academic misconduct.

2. Any student organization officially recognized by an institution under the control of the state board of higher education has the right to be represented, at the student organization's expense, by the student organization's choice of either an attorney or nonattorney advocate, who may fully participate during any disciplinary procedure or during any other procedure adopted and used by the institution to address an alleged violation. This right only applies if the disciplinary proceeding involves a violation that could result in the suspension or the removal of the student organization from the institution.

3. a. Any student who is suspended or expelled from an institution under the control of the state board of higher education for a violation of the disciplinary or conduct rules of that institution and any student organization that is found to be in violation of the disciplinary or conduct rules of that institution may appeal the institution's decision to the same institutional body that conducted the original proceeding.

   b. The student or a student organization must file the appeal no later than one year after the day the student or the student organization receives final notice of discipline from the institution. The right of the student or the student organization under subsection 1 or 2 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 to the appeal.

c. 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.

4. 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 suspension or expulsion. In any successful appeal brought under subsection 3, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which had not been previously refunded."

Renumber accordingly

Date: 2/9/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2150

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15.0596.02003

Recommendation: ☑ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Grabinger Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue		✓	Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick		✓			

Total (Yes) 4 No 2

Absent Ø

Floor Assignment Ø

If the vote is on an amendment, briefly indicate intent:

Motion Carried.

Date: 2/9/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2150

Senate **JUDICIARY** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Grabinger Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue		✓	Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick		✓			

Total (Yes) 4 No 2

Absent ϕ

Floor Assignment Sen. Armstrong

REPORT OF STANDING COMMITTEE

SB 2150: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2150 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

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   b. The student or a student organization must file the appeal no later than one year after the day the student or the student organization receives final notice of discipline from the institution. The right of the student or the student organization under subsection 1 or 2 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 to the appeal.

   c. 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.

4. 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 suspension or expulsion. In any successful appeal brought under subsection 3, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which had not been previously refunded."

Renumber accordingly

2015 SENATE APPROPRIATIONS

SB 2150

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

2150
2/17/2015
Job 23950

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Penrose for Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL relating to student and student organization disciplinary proceedings at institutions.

Minutes: Testimony 1 - 2

Chairman Holmberg: Called the committee to order on Tuesday, February 17, 2015 at 8:30 am in regards to SB 2150. All committee members were present. Chris Kadrmas, Legislative Council and Tammy Dolan, OMB were also present.

Chairman Holmberg: Introduced the bill. The Chief Justice focused on due process when he gave us his talk on January 7, 2015. SB 2150 is a bill dealing with due process of students and organizations on campuses. You received some resolutions from student senate. There is a memo from Bruce Gjovig about due process. There is a Grand Forks Herald editorial about this bill. There is the testimony of Sherry Warner Seefeld whose son was involved in a high profile case of being expelled from UND; and a USA Today article about the issue, Inside Higher Education article (see attached # 1). The experts on this are behind me; Senator Armstrong and Senator Casper worked on this bill extensively and made some changes. The original bill had a $2.5M fiscal note; the bill now has an $830,000 fiscal note. We don't have the budget for the university system. We are asking you to look at this bill, and we can address any fiscal issues during the second half. The fiscal note was passed around.

Senator Kelly Armstrong: The bill as it was introduced allowed a student involved in a disciplinary proceeding or a group involved in a disciplinary proceeding at college campuses to have the opportunity to have a lawyer or non-lawyer advocate. There was an appeal into district court. Currently, they are allowed to have a lawyer but the lawyer can't participate in the hearing. This would also allow the attorney to participate in the hearing. We shored it up so that the only time you could have a lawyer or non-lawyer advocate as a group or individual is if you are facing suspension or expulsion. That will cut out over 90% of the cases. The big cases, you're still allowed to have it. The Universities don't issue 10 day suspensions; the suspensions are either a semester or an expulsion. On some campuses it was more than 1,000 cases a year to probably, to less than 50 a year. That would be if the individual or group had a lawyer. We took the appeal out of district court, because there were some problems with that based on whether you had to have a regular

transcript, some privacy issues for witnesses who testify at the University proceeding. We brought the appeal back to the original board that heard it. One of the reasons for that was based on practicality, you would rather have the group that heard the original case hear the second one, because they already know the facts of the original case; you don't have to relearn the original facts on an appeal. Secondly, the university doesn't have to set up a second board of appeal. They all have this JBoard, whatever the process is at their school; I always appreciate talking to the same judge who heard the original facts because you don't have reteach them the whole thing. The big point to this bill was to make sure they got a lawyer that can participate in the original hearing. With the appeal, instead of going to district court, that should take away the need for a transcript. They can do an audio recording. That's how we handle other administrative hearings across the state, whether it is DOT or Admin. Law judge hearing. We took out the district court appeal; we gave them a year because oftentimes these original disciplinary proceedings happen very fast; especially if it is a crime of violence, the University needs to act, because they have a dual role in protecting the student's due process rights, but they also have the safety of the community. We gave them a year, that is plenty of time for any companion criminal or civil case to go through and evidence either through a transcript, police report, etc. We gave them the appeal as a matter of right; which means they can appeal. One thing we found in testimony was a lot of these rehearings were based on new evidence. In the case Sen. Holmberg was talking about, the alleged victim got charged with a crime of lying to the law enforcement and the University said that wasn't new evidence, so they weren't granted an appeal. As opposed to making somebody else make the determination, we gave it as a matter of right. The reason we didn't do a rehearing was because we were conscience of victims' rights as well. If you give them a year to have an appeal, we didn't want to see a year to have an automatic rehearing because they can drag the victim in twice and we weren't comfortable with that. At the appeal you could grant the appeal, deny the appeal, reduce the suspension, or order a rehearing. If the student either had a reduction in suspension or expulsion, we put in there where the University wasn't mandated to, but may refund any tuition or fees that were owed to the student. The fiscal note is interesting to me because I don't know why they would need a court reporter or administrative judge. This would run in the same system they run in now; it would just dictate the rights available to them. We tightened it up to get the fiscal note down, still protect the University and students' rights and I think this is a good bill.

Chairman Holmberg: Is it not true that the basic tenets of this bill, before you amended it, was a NC law, which recently passed. Did you not also find it ironic that if the student involved at the UND function, had been at Red River High School, he would have had the opportunity to have his own lawyer, at his own cost to defend him if they were going to expel him, yet because he was a 1.5 miles away at UND he could not have a lawyer to help him in the process and speak for him.

Sen. Armstrong: I have done these hearings; I've participated with students in these hearings at one of our universities. Having a lawyer in the room that is not allowed to speak; it's frustrating to the process, it's frustrating to the client, these happen very quickly. There is often a companion criminal case associated with it. There are a lot of dangers in place, both the due process right of the defendant and for truth-finding, no offense to a sophomore Phy Ed at Dickinson State University, but this isn't exactly his wheelhouse. These are serious allegations that are not only serious in the university setting, but the 5th

amendment truly does mean "anything you say can and will be used against you. They aren't kidding about that. When you are trying to defend yourself in dual roles, it is necessary you have a lawyer that can participate.

Sen. Bowman: The fiscal note of $2.5 million, what exactly does that pay for?

Sen. Armstrong: The current fiscal note is $800,000 and it says one new lawyer, an administrative law judge, equipment and a court reporting. My response to the fiscal note would be to buy a recorder with a speaker. That's all I get in admin. hearings in DOT.

Sen. Jon Casper: Testify in support of SB 2150. 1st issue is regarding justification, 2nd regarding the fiscal note. The justification for this legislation is to be very clear at a very simple level. As we go through these administrative hearings that are taking place, you're creating a record. If there is a lawyer in the room that cannot participate, that student might be involved in a very severe accusation and the timing is the big key to this is that the hearing happens quickly and rightfully so, if someone commits a serious crime or being accused of a crime on a campus. The campus wants to get that taken care of and if the student did commit that action, get the student off the campus. The criminal system doesn't happen as quickly. You have a hearing, they go through the administrative process, anything that is said in that then becomes part of the record that can later be used at a criminal case. If the student doesn't have a lawyer in the room, or someone who is allowed to participate in that process, they are creating a record that can be used against them in later court appearances. That's sort of the justification for allowing them, at their own expense, to have an attorney there, have someone present that, as they are creating a record that can later be used against them in the process. That is the due process part of the legislation. The first fiscal note initially was at $2.5 million; there was a potential appeal to district court. We don't see this happening; we removed the district court appeal. You don't need a court reporter there, but maybe an audible system to record. Maybe the university system might need an attorney involved.

Chairman Holmberg: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony.

Murray Sagsveen, Chief of Staff of NDUS: I have some information about disciplinary proceedings and an explanation of the fiscal note (see attached # 2), the Student Disciplinary Data. It is broken down by the 11 institutions and by the disciplinary issues. The total number of reports were 3,123. The total number of disciplinary hearings in the university system was 2,757. Now the bill allows an attorney or non-lawyer advocate when they are looking at suspension or expulsion. You will notice the greatest number of hearings involved alcohol, other drugs, and it goes down that list. The number of disciplinary proceedings that could involve expulsion or suspension decline. We can tell the number of suspensions in the last academic year was 21 and the number of expulsions was 5. So it might involve a total of 26 students. We don't know on the data, is how many disciplinary proceedings could have led to suspension or expulsion, but didn't. There are a lot of disciplinary proceedings in the university system and in those 2,757 a student can have an attorney advisor to advise the student but not speak on behalf of the student. This bill will allow the attorney to speak on behalf of the student during the serious disciplinary proceedings. To the fiscal note, if there would be an attorney involved in all of these 2757

cases, or could be, we didn't know how many might be involved; we came up with 9 FTEs. When the bill was amended, we still don't know for sure what this may lead to; we thought that it could lead to a number of full blown disciplinary hearings on more than the 26. We may need another attorney or an administrative law judge and court reporter. I've been working with attorneys in the university system for the 1.5 years. My experience is that they are booked up; they don't have any surge capacity to take on additional work like this. I suggested one additional atty, to represent the universities in these areas. Concerning the administrative law judge, if we need to take this to an administrative law judge, the delay is about 3 months; we can't wait 3 months for a disciplinary proceeding. We suggested an administrative law judge. Yes we could record the hearings, it's done a lot of times in administrative proceedings, but in student proceedings, we have to be much more careful because the federal law, known as FERPA prevents the disclosure of student information. If we proceed with disciplinary proceedings or taken to a district court, we would have to redact certain student information and it's best to have a court reporter.

I would recommend if this bill passes, we not hire an attorney, adm. law judge or court reporter until we see what happens. I suggested in the fiscal note that if the demand is there, the people would be hired, but if the demand is not there, they wouldn't hire anyone.

Senator Carlisle: You explained the bill, you must have a position on it, do you think it is okay in its present form.

Mr. Sagsveen: We discussed this at the State Board of Higher Education on January 29th, and I was instructed to work with the sponsors in order to fine-tune the bill; propose the amendments. The current version of the bill is far better than the first version of the bill. I suggested some fine-tuning amendments to the bill's sponsors; if they are adopted, I would recommend to the Board of Higher Education that we would support the bill.

Senator Carlisle: I move a do pass on this bill.

Senator Wanzek: Second the motion.

Senator Heckaman: I have one question. The way the bill is written, it says that the students may have this attorney, if it's a violation that results in suspension or expulsion. Given the documents that the University System handed out, how do we know on those 2757 hearings, which ones this would apply to? Do we know before the hearing starts?

Sen. Armstrong: Yes, they would have to notify the student, because that is how the right to counsel would trigger. The vast majority don't require suspension or expulsion, so prior to the hearing they would have to notify you that you are facing a suspension or expulsion offense. The U has to give that student notice of that.

Chairman Holmberg: Call the roll on a do pass on 2150.

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0. DO PASS motion carried.
Carrier: Sen. Armstrong will carry the bill.
The hearing was closed on SB 2150.

Date: 2-17-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2150

Senate Appropriations Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Carlisle Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman	✓	
Senator Bowman	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson	✓	
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No

Absent

Floor Assignment Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2150 was placed on the Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2150

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2150
3/23/2015
25272

☐ Subcommittee
☐ Conference Committee

Explanation or reason for introduction of bill/resolution:

Relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

Minutes: Handout #1, #2, #3, #4, #5, #6, #7, #8

Chairman K. Koppelman: Opened the hearing on SB 2150.

Senator Holmberg: Introduced bill in support. It is designed to bring fairness to a process that is flawed and unfair in its design and application. Chief Justice Gerald VandeWalle hit the nail on the head in his state of judiciary address on January 7, 2015 when he said "Do process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights including the rights to a fair hearing before a fair and impartial court with the power to decide the case." It encompasses the principle that the state must respect all the legal rights that are owed to a person. This bill provides that a student at our university system or also organization who was accused of committing and act which could lead to his or her expulsion or suspension is allowed legal councel who can represent the student during the hearing process. When you have time google Caleb Warner. A stigma visited upon him by a flawed process without do process will be with him for the rest of his life and this unacceptable. 2150 will not erase Caleb's google record from the web but it will protect others into the future. The perfect irony, if Caleb Warner had been a student at Red River High School and there was an expulsion process started he would have had every opportunity to be represented by legal counsel, but because he was a mile north of Red River High School at the University of North Dakota he had no right to true legal representation. Arthur H. Jackson Brown Jr. once said live so that your children think of fairness they think of you. I think this is a good bill and I would hope you would give it a positive action. (Handout #1)

Rep. L. Klemin: We have had national notoriety with things that have happened in other campuses around the nation over the last couple of years, most recently it was Oklahoma where there was a video made of some fraternity brothers making racial remarks or something to that effect, I am not sure exactly what happened, but I did hear that a couple of those students were expelled by that university. I see that this bill doesn't deal with academic misconduct, but that kind of situations would that be one of those situations

where that could apply under this bill, if a person was about to be expelled because of some conduct like that?

Senator Holmberg: As I understand it that in the process to often the student or even sometimes the people from the campus are not fully apprised that anything you say at one of these university type hearings is admissible in the court of law. So you have an 18 year old arguing with an experienced lawyer without having the benefit of having an attorney present to speak for him. You can have an attorney in the room but they can't say anything. What happens then is a student who is going to be expelled so you spend hours trying to teach this 19 year old how to be a lawyer and protect his rights because he may say something that is admissible in the court of law later.

Rep. L. Klemin: This also talks about student organizations; now in this particular case would a fraternity be a student organization?

Senator Holmberg: Yes. Then you get in to the awkward question; two stupid people doing stupid things has vast implications for 30 people who did nothing wrong. The basic premise here is we want them to have the opportunity to have counsel with them if they so choose to help them through the process.

Chairman K. Koppelman: How does this work now? You can have counsel but they may not speak for you is that the current process?

Senator Holmberg: Yes, you will hear from later testifiers.

Chairman K. Koppelman: The fiscal note says this bill would potentially expand the workload at the universities. It also says estimates costs would be for the following new positions one attorney, one administrative law judge and one court reporter. Then, and I am not sure I understand this statement; the number of potential cases would be reduced to less than 50 per academic year. This is prepared by the University system office who to the best of my knowledge may employ attorneys but they don't employ administrative law judges. Have you waited through the fiscal note on your side?

Senator Holmberg: Yes we did go through that, but we did not put as much credence in it as the lighter of the item. This does not deal with academic issues.

Rep. D. Larson: In 1970 as a 20 year old physical education student at UND in the college of arts and sciences I was on the apparatuses class on the trampoline and I got an injury which prevented me from being able to physically participate. I attended the classes and wrote papers on the kinesiology of what we were doing, but when I was told again that I couldn't participate for another two weeks the instructor told me " this is an activity class and if you can't participate is suggest you drop the course." I went to the head of the physical Ed department and said I don't know what to do this class is only offered every other year and if I can't take this now I have to take one more class after my other things have been completed to graduate. She said to me I will get you back into the class but don't tell anybody that this happened or you will be labeled a trouble maker and trouble makers find it very hard to graduate from this college. I had no knowledge of this whole process and I went to someone higher up who I thought could help and it was no help at all.

At that point I went to the dean of the college and switched to the college of science and became and English major. I feel that this wasn't even an accusation against my character. This isn't a question but I do have to say that I very much appreciate being able to be part of something that gives students the ability to feel that they have some recourse.

Rep. G. Paur: Would this address her problem?

Senator Holmberg: No.

Rep. K. Wallman: In the Higher Ed budget there is a proposal to move attorneys into the AD's office, would that have any impact on this.

Senator Holmberg: No. Not that I have heard of but I can't see a connection.

Senator Casper: There are three practical goals we want to take place; as a student and expulsions being considered or any kind of hearing over what the university perceives to be improper conduct, that it that student wants they can have an attorney in the room to put a say in the process. Second, same thing for a student organization. Why that is so important is that process is creating a record. As the university is questioning the student and trying to come to a conclusion on what course of action to take they are creating a record and that record has been admissible in later on court proceedings. These types of proceedings take place in 10 to 30 days, much faster than our criminal proceedings through our states justice system. Later on the law enforcement gets involved because it is a violation and may also be a criminal violation under our states criminal code. The record that is established in that first 10, 15, 20 days with the university proceeding can be admissible and part of that record moving forward. When it comes to due process, if that student is in that room without being allowed to have an attorney participating in the process they are creating a record that then could be later used against them. There is just sort of lack of balance involved in the process there from our view point. The third thing, talking about the swiftness of the proceeding it is very important to the this bill that criminal procedures may take place, things happened the university wants to act swiftly to protect their students, while items may come to a light a month from now, two months from now , three months from now. We want to make sure that when those items come to light that the student has every opportunity to appeal that original decision and that the burden doesn't shift for the student to have to prove that they deserve that appeal it should automatically be granted if they decide. We were working with other legislation that is taking place throughout the country right now and this is an issue that a lot of states for the first time starting to take action on and we are in the lead roll there in part of that process. **(Handout # 2)** I handed out a draft amendment with some notes on the side, this is sent to us as a suggestion of the university system and a majority of this is clean up stuff. Section 3 part C is really our view on the appeal and where the student gets that appeal automatically if they desire it.

Chairman K. Koppelman: Your major concern is 3 C?

Senator Casper: Really 3 C and 4 but particularly the underlined section of C.

Rep. Mary Johnson: Are the 11 institutions of Higher Ed required to hold a hearing on suspension and expulsion matters?

Senator Casper: I don't know the initial hearing. What this legislation with section 5 is going to do is allow them to put that process in place. I don't know statutorily what the exact requirements are in their initial hearing that they have on consideration of that.

Rep. Mary Johnson: You can have all the due process in the world but if you don't get a hearing at the get go, you talked about the universities moving swiftly, so my concern is that if perhaps everything can be appealed whether there was an initial hearing or not answers that question forcing the universities to grant every appeal. If there was just a summary expulsion at the get go without a hearing and they are not required to have the hearings then that kind of faults the purpose of due process.

Senator Casper: You are talking about a situation where there is no hearing then there would be no record on the student's record that could later on be used in district court against them. With regard to the appeal section of this, if there was someone who was summarily expelled they would be given an automatic right to appeal that decision.

Rep. L. Klemin: I have having trouble with terminology in here. We have a hearing that is conducted by an institution and then we provide for an appeal to the institution decisions to the same institutional body that made the decision. When I think of an appeal I think of going to a different body rather than to the same body, so isn't it really more accurate to instead of saying "appeal" that you can request reconsideration of that decision?

Senator Casper: I think you are right. We could call it reconsideration. They are the original ones that heard it but it might not be the same people on the university board, but it would still be the original entity that heard the hearing.

Rep. L. Klemin: The composition of the body might be different, but it is still the body that's made the decision and that's reviewing the quest for reconsideration as you will.

Senator Casper: Correct.

Rep. L. Klemin: You talked about going to court and I don't read anything about going to court in this bill.

Senator Casper: Originally there was reference to district court but that created a number of issues so that was amended out of the legislation. The key is with due process, there is an attorney in the room participating in the hearing so that if the record that is created during the original hearing or the original appeal that takes place in that short window ends up going into district court that an attorney was present for the student or group at the beginning to give them due process protections.

Rep. L. Klemin: Even though it doesn't say you can appeal to the courts, but since it doesn't provide for judicial review in this bill does the student who has an adverse decision is affirmed on reconsideration entitled to judicial review by some other method?

Senator Casper: I don't see that they would. Not under this specific legislation.

Rep. L. Klemin: That would be the final decision that is not subject to judiciary.

Chairman K. Koppelman: Walk us through your understanding of how this could work now when a hearing is held or when something like this comes up.

Senator Casper: There is a violation, a hearing conducted and as far as who is in that room there is an administrator from the university, there may be students on a panel that are chosen. It is sort of different per institution from what I have heard. They conduct the hearing, make a determination on whether or not there is a violation and what the penalty should be then depending on what determination they make that will take place against the student.

Chairman K. Koppelman: So this is an entirely internal process and who participates in the hearing and adjudicates the hearing?

Senator Casper: It depends on the institution. I think it will be administrators, faculty and students.

Chairman K. Koppelman: The fiscal note refers to the administrative hearing process that is in place now and state government for other agencies, is that the intent of the bill that it would kick this into that?

Senator Casper: No it is not the intent there would be an administrative law judge coming in from the office of administrators. We have to remember that these numbers could be a little off but the universities told us that there is 28,000 cases a year. I would just say our opinion differs on the extent that is going to be of the cost and the extensive work load that is going to take place. Our view is that not every minor infraction, every violation for a typical violations like alcohol violation of a dorm that every student is going to have a lawyer there present with them.

Chairman K. Koppelman: If there is a violation acquisition and it appears serious enough to a student that they want to have an attorney present, this hearing would take place, the attorney would be present, some parameters in the bill about that and then if the student is aggrieved by the decision or says this just wasn't fair then what?

Senator Casper: There would be a hearing and an initial appeal as it stands now and six months later say there is a criminal investigation and as part of that investigation it is brought to light that the student whatever there was a hearing and appeal about originally and that can now be proved due to the criminal investigation taken place by the sheriff's department that they can could then go to the university system back to the same board, the could request the hearing that they would be automatically given, they could present that evidence and then that board could make a determination of whether or not they would allow the student back into the university.

Rep. L. Klemin: What the student says at this initial hearing could be used against the student at a criminal proceeding outside this hearing process.

Senator Casper: That is absolutely correct and that is what is taking place.

Vice Chairman Karls: Are these students typically Mirandized? What if the student doesn't have the financial ability to hire a lawyer?

Senator Casper: No to both. They aren't being arrested so they aren't Mirandized. Providing an attorney at an institution hearing is different than under criminal law or district court were we provide an attorney so we did not include that in the legislation.

Rep. K. Wallman: Would the attorney be able to speak on behalf of the student they are representing?

Senator Casper: Correct.

Rep K. Wallman: One student may have an attorney speaking on their behalf. Say I was sexually assaulted on campus and I want to bring justice to the person who perpetrated that and they can afford an attorney and I can't, doesn't that put me at a disadvantage to having a fair board hearing?

Senator Casper: If you are talking the victim of an incident or crime, even under the current criminal justice system the victim doesn't have representation they are not a party to the hearing, just like they wouldn't be a party to the criminal proceeding in a district court. If they want to take civil action later on they could be represented all they want but it is not typical that a victim would have representation from an attorney.

Rep. Lois Delmore: Is there a standard of proof that has to be presented at these hearings?

Senator Casper: I would defer the technical answers to the university system but it is certainly lower than a criminal proceeding in district court. The standard there is about as high as we have in all of law.

Chairman K. Koppelman: Is there civil remedy available now should there be a false accusation or a false judicative of a circumstance later found to be untrue; is there a civil avenue available to them?

Senator Casper: I don't know if there is a specific civil remedy for this specific type of incident laid out in code but certainly there are being a number of civil remedies that could take place, actions could be filed.

Sherry Warner Seefeld, Social science teacher at Fargo Davies High School: See Testimony #3 and Handout #4.

Rep. Brabandt: Were there any disciplinary actions taken against Ms. Evans?

Sherry Seefeld: No.

Rep. K. Wallman: I agree the process can be streamlined. Do you believe this bill would afford the same rights to an impoverished student or a student who couldn't afford and attorney? You testified yours son did have an attorney and the woman who was making the accusations didn't and she was relying on the university systems counsel. Do you feel this bill affords the same playing field for the accuser of the sexual assault or the complainant as it does a person who is defending themselves and can afford legal representation?

Sherry Seefeld: I don't think the questions is whether or not the claimant is held back more by financial reasons, because that is more on the vases of how much resources a person has. I don't think that is factor of whether you are a claimant or a respondent. I understand that when you have been a victim of an assault there are things that happen to you as a victim that make it difficult for you to come forward and talk about it. We have experienced that.

Rep. K. Wallman: Does it seem reasonable that if we are allowing an attorney to speak on behalf of one student and the other can't afford it that one should be provided?

Sherry Seefeld: I can't speak to the way the bill has been set up. That the finances that the fiscal notes says, what the provisions are, what the possibilities are on campus in terms of providing attorneys. I understand your concern for fairness, but what Caleb experienced was a participating active attorney and an attorney that wasn't participating to protect him and I don't think that is fair either.

Chairman K. Koppelman: Unlike a civil case where both sides have legal representation representing their side, in a criminal proceeding if someone is accused of sexual assault they don't have an attorney representing them either. They have taken their concerns to law enforcement via prosecuting attorney, the state's attorney typically is the one bringing that charge and so it is in accusation that a defendant then has to defend and that is who as the attorney representing them. If I understood your story correctly, the scenario you described there was an attorney who was employed by the university that was in essence helping the accuser make the case at that hearing?

Sherry Seefeld: Yes there was an attorney and a dean.

Rep. K. Wallman: Do all universities have the same appeals process?

Sherry Seefeld: My understanding is the state universities have wide latitude even within the state.

Rep. Maragos: Does Caleb have any ability to sue the university for their mistake to claim relief on what happened the him?

Sherry Seefeld: I did retain a second attorney doesn't do that kind of work, to look into that and it took a year and half of this kind of pressure to sort of pressure UND, sort of humiliate UND to reverse these sanctions. Then that attorney said we really don't have any way to do this to a university they have lots of protection. Currently however attorneys are using title 9 to bring action against universities and that has had some amount of success.

Universities in some cases nationally are settling those cases. When taking on a university system if they want to go the whole way you have to have pretty big pockets to do that and it just is not realistic for many people.

Rep. Lois Delmore: Is there a requirement for the university that they must record these hearings?

Sherry Seefeld: I don't know the answer to that to be honest.

Aaron Weber, Executive of Governmental Relations for NDSU Government: See testimony #5 and see handout #6.

Rep. Mary Johnson: Handout #4 just became effective in August last year and now students are allowed hearings pursuant to this policy?

Aaron Weber: I don't know what specific policy you are talking about but it is my understanding that every student at NDSU gets a hearing.

Rep. G. Paur: I handed out Handout #4. The university system has about 500 pages of policy and this is due process part of their policy. The individual university system expand on this, this is the minimum. It could possibly have been effective for 20 years because they are always being updated.

Chairman K. Koppelman: Does student government get involved in these processes at all?

Aaron Weber: The conduct board at NDSU is made up of representatives from the office of student life, faculty and then a couple representatives from the student court which is the judicial wing of student government at NDSU.

Chairman K. Koppelman: Your roll would be part of the judicative process or the decision whether or not to issue sanctions or punishment?

Aaron Weber: Student courts roll would be to ultimately determine whether or not enough evidence has been presented to sanction a person with expulsion or suspension or any kind of punishment. We would not be part of the prosecution necessarily but we would be more or less part of the jury you could say.

Chairman K. Koppelman: When you say you are part of the jury so how does that work?

Aaron Weber: My interruption is the whole conflict resolution board as a whole votes on whether to sanction a student with some kind of discipline. That is my understanding of the process so students ultimately have a vote. It is a group decision of that board.

Chairman K. Koppelman: That is how it works through NDSU?

Aaron Weber: Yes, I can't speak for anywhere else but I would assume it is fairly standard per university policy across the system.

Rep. L. Klemin: This non attorney advocate, is there an organization at NDSU that does this now?

Aaron Weber: There is no organization to my knowledge at NDSU that will represent you in a hearing, but I am sure there are people with considerable knowledge of the conduct policy whether that is in student life or a friend that enjoys reading the policy manuals. To my knowledge this is a new idea in order to help facilitate those who don't have the financial means to hire an attorney but to have some sort of representation in the room.

Rep. P. Anderson: NDSU what is the charges that people are immediately dismissed from the college?

Aaron Weber: I would imagine something along the lines of sexual assault, homicide, rape. A majority of hearings of these conflict resolution boards are alcohol violations.

Chairman K. Koppelman: Are you aware of cases that your judicative wing of the student government has participated in the decision for expulsion and later there is a criminal investigation and it goes nowhere and it appears it was a false accusation and that person was cleared. Have you seen any of those cases where that result has then resulted in something else at the university and do you revisit it at that point?

Aaron Weber: These hearings are confidential so we don't have a lot of specifics on them for obvious reasons.

Recessed

Chairman K. Koppelman: Reopened hearing.

Chase Johnson, UND Student Government: See Testimony #7
We definitely would like to see the students have the right to due process.

Rep. K. Wallman: In the third paragraph, these types of mistakes are happening all the time, can you give any other examples of false accusations that have taken place in the university system other than the one we heard this morning?

Chase Johnson: In terms of individuals I cannot give anymore examples. In terms of student organizations I have seen false accusations on particular organizations especially fraternities on campus. While they were not prosecuted there have been false accusations.

Rep. L. Klemin: I was assuming these were closed hearings and representatives of student government are not eligible to attend, is that correct?

Chase Johnson: That is correct.

Chairman K. Koppelman: You and Mr. Weber both testified representing our two largest institutions in North Dakota, both representing student government testified in support of this and I am aware that both entities have registered great concern for the safety of

students, concerns about sexual assault and other things on campus. Is it your opinion that you are taking a balanced view of these issues when you come here and say this is really needed?

Chase Johnson: Of course we are taking proactive measures on sexual assault. UND student government within the next week will be launching and It's On Us campaign. Ultimately we are looking for due process, we aren't saying that one side is right and the other is wrong we are just looking for fair representation for all students.

Chairman K. Koppelman: That case that we have heard so much about and has kind of become the poster child and it was at your institution, just to wrap a ribbon around that and help me understand. This individual who was falsely accused, what is the status? Was he readmitted? Could he be if maybe he didn't want to be?

Chase Johnson: I do not believe that even after multiple attempts to try to get a rehearing deal to be readmitted he was never allowed back into the university, because they claim there was no new evidence presented.

Chairman K. Koppelman: I believe the accuser has left the state?

Chase Johnson: I ultimately joined UND in 2013 so it was prior to my time here so I am unaware of the accusers status.

Vice Chairman Karls: In Mrs. Seefelt's testimony she stated that the panel that held the hearing contained three students and three faculty members. Are they just generic students or are they members of student government?

Chase Johnson: Student government has no say or input on who gets brought into disciplinary proceedings.

Rep. K. Wallman: Did the student government organizations approach the State Board of Higher Ed to revise or review or amend their disciplinary and appeals process before getting behind this bill?

Chase Johnson: I do not know what actions were taken back in 2010. In regards to student government in the case of Caleb Warner I know that we have always had concerns about this and we feel that SB2150 is a good way of dealing with that concern.

Rep. K. Wallman: Has the student organization you represent approached the State Board of Higher Ed to review their process that they have in place state wide?

Chase Johnson: I do not believe the UND student government specifically has gone out but I know through NDSA (North Dakota Students Association) there have been concerns brought up to I believe the State Board.

Joe Cohn, Legislative & Policy Director: Foundation for Individual Rights in Education: (Handed out a folder #8) This is about campus due process. The cost at other universities so far has been zero dollars. UND has been sending a lawyer to be in the

room for the hearing. It doesn't matter whether they are deciding whether someone should be expelled because they rapped someone, or they violated the schools rule on raping someone. It is a distinction without a difference. They are trying to figure out with an accusations is it true or is it not true. At the moment right now we know that there are schools that are sweeping accusations of sexual assault under the rug that was happening in this country. We knew that there were students coming down like a hammer on accused students regardless of the facts. Those situations were happening. The schools where they have actually initiated and expulsion hearing they are no longer in that category of schools that are trying to sweep it under the rug. What we have at the table now is whether or not they are doing it competently. I also know that I cannot let perfect be the enemy of good.

Recessed

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2150 P.M.
3/23/2015
25297

☐ Subcommittee
☐ Conference Committee

Explanation or reason for introduction of bill/resolution:

Relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

Minutes: Testimony #1, #2

Chairman K. Koppelman: Reopened the hearing on SB 2150. PM We recessed for lunch. Will reopened this hearing at 10AM tomorrow for educational system hearings.

Joe Komb: Continued on with written testimony #8 page 29 from A.M hearing. Some of the questions that were asked: whether or not students are entitled to hearings? There are different rule for public universities and private institutions. Public institutions the due process clause applies. The United States Supreme Court has said in the K-12 context and federal circuit courts have followed it in the Higher Ed context that the due process right to attach a suspension longer than 10 days or longer or and expulsion. Then they say even if you think there is an educational value to the hearings there is also undoubtedly, un-debatably, certainly also a punitive aspect. That is where the due process clause attaches. You should be thinking for yourself Is there a more serious context as a student being charged with a felony behavior because there are not many schools that are lining up to admit people who have been charged with this. Tomorrow when you hear from these schools think about how long they have been doing it. The students don't have the experience that these institutions have. It isn't to make this more formal it is just to allow someone who knows what they are doing to actually speak and this matters a lot. Practice and experience goes a long way, but for every single one of these students they are going through the process the first time and for them they don't have the wealth of knowledge of recognizing the fact patterns that matter. Even when you set aside the Fifth Amendment implications the fact of having a professional in the room who can speak is a powerful tool to getting things right and ultimately that is what we are trying to. It's not just about the fact that sometimes there are false accusations it's about the fact that even if you have a student who is ultimately guilty as sin you need to make sure you have a process that is reliable. One of the questions that was asked was about the right to hearings and whether or not that even exists. Yes at the public institutions there is a right to have a process where you get a change to get notice of the charges against you and a reasonable opportunity to contests them. The right does not go further to say explicitly that is always

has to come in context of a hearing. So this bill will go a long way to make sure that students get their fair share of and hopefully on both sides. I am looking at what is the best way that we can protect people and the most people and that is to at least make sure that they are not cut off from the ability to get lawyers if they can. You had asked about Miranda rights, they aren't doing that. There is a bill in the Massachusetts legislature that also includes a provision advising the students of that right. There was question on what the rights were already; under federal law if you are at a public university a student already has the right to appeal to federal district court under the due process clause, was the result arbitrary and capricious. At private institutions that right depends on what the student handbooks say, so you would have to base the claim as a breach of contract and not necessarily as a constitutional right.

Rep. L. Klemin: On judicial review under federal law it would require a record to review, they don't do that off the record in federal court that you know of or do they?

Joe Komb: No they are supposed to do it on a record and schools all over the map and whether or not they keep and maintain files, whether or not they have audio transcripts etc. Sometimes they have a record and sometimes they don't. What tends to happen in those cases where there isn't a record is there are a lot of depositions and then what happens there? It makes it more expensive to litigation.

Rep. L. Klemin: This bill doesn't say about a record being made and retained and preserved.

Joe Komb: No it doesn't fix that particular problem in how easy it is for the courts to decide then. We would support such an amendment. We would support having transcripts.

Rep. L. Klemin: If the standard is whether it was arbitrary, capricious and unreasonable the court can't make that determination without a record to review.

Joe Komb: It's really hard for them to do it when it is based on these discovery things and to who testified as to what and affidavits. I am will you entirely but you have a body of case law that makes sense in cases where there was a record it makes less sense on the cases where there isn't one.

Rep. L. Klemin: Subsection 1, page 1 says any student has the right counsel or non-attorney advocate, do you read that as any student being both the victim and the alleged offender?

Joe Komb: Section 6 says; nothing here in affects the obligations of institutions to provide equivalent rights to a student who is the complaint tent or the victim in the disciplinary proceeding. That is in the amended right up version that I was given this morning. When we were first discussing the bill the original language was supposed to provide it to both sides. The attempt is to put it back in and we certainly completely support that.

Rep. Maragos: Page 3 has number 6 that would be the proposed amendment change.

Rep. L. Klemin: Those are his comments and I don't know who's they are.

Joe Komb: That is a good one. I hope you guys adopt it because it would improve this bill

Chairman K. Koppelman: I believe that Senator Casper indicated that these were suggested amendments from the university system and then he had his comments about the ones he agreed with and any changes that he would see.

Joe Komb: I want to express as extremely as I can our agreement of that particular language and it could go away.

Rep. L. Klemin: Subsection 1 says any student has the right to be represented. Any student could be the victim or the alleged offender. It doesn't say offender it says any student. So even if we don't have that amendment it could be read that way. My next question is; so you have the right to counsel, do you have the right to the confrontation through examinations? Does the alleged offender have the right to examine the victim?

Joe Komb: This bill hasn't provided that explicitly, it talks about full participation. I have had versions of different states at which they laid that out, the right to confrontation. I think the right to confrontation is a key right and I think that only strengthens the due process protections. I think in the context of the campus sex assault cases the department of education's office for civil rights has urged schools to not allow the actual accused student to be the human being who questions the accuser. While providing a right to counsel to do that questioning satisfies them and they say that's ok. That also brings you more into compliance with the department of education office for civil rights I saying. Full participation is designed to at least prevent the potted plant procedures where a lawyer is allowed to be in the room as long as they act like a potted plant that can't do anything. To me it involved being allowed to open ones mouth and being able to say things at least at each one of the phases.

Rep. L. Klemin: Page 1, line 10 it says may fully participate in the hearing of a disciplinary proceeding in your estimation would include the right to examine the witnesses.

Joe Komb: Right otherwise that is less than full participation, how do you have a witness that you aren't allowed to talk to. If you want to make it more explicit we would be fine with that. I am always for more clarity.

Rep. G. Paur: You said in the case of Caleb Warner that case was an example of politics getting in the way. Can you elaborate a little bit?

Joe Komb: What I mean by that is not democrat republican politics but we have schools that are sweeping accusations of sexual assault and things under the carpet, for a variety of reasons. On the other hand we saw schools that were so petrified of being viewed as protecting people who are accused of rates. Petrified of the federal government who has been particularly one sided in this debate only threatening to take away funds if you didn't do enough for one of the two students.

Rep. G. Paur: Would it be feasible to just eliminate actions for a felony until there is a conviction?

Joe Komb: FIRE, we are growing more skeptical of schools ability to judicate these very serious felonies, because at the end of the day you are asking the dean at the English department, a physics professor and a student studying anthropology to decide if a date rape occurred. Without the availability of forensic evidence, without having the ability to subpoena witness, without the ability to put witness under oath and the long list of things they don't have at their disposal is just law. To ask them to get it right even when they are trying in complete total good faith is in my view kind of nuts, but at the same time there is a tremendous obligation appropriately so to make sure schools are safe the day after and accusations. We have to at least empower them to use interim tools to use.

Rep. Lois Delmore: Did you say in this state it is the case that all the proceedings are recorded?

Joe Komb: No. I don't know what is happening at all of the schools.

Rep. Lois Delmore: if it would be recorded can it be used in court later?

Joe Komb: Yes it can be subpoenaed. This is an important point; the courts aren't unified upon this point. The rule that is at play is an exception to the hearsay rule that says when someone says something that is against their own interest people tend to lie to make themselves look better. There is another exception that says if it is truly compelled speech they made you answer, they didn't give you a choice to answer it then another exception would apply to keep it excluded. When I say it is admissible I don't mean to tell you that in every instance it will be, but that it is a significant risk that you need to keep in mind because it happens regularly.

Rep. Lois Delmore: If we don't work through some type of proceeding in conjunctions with the universities will we open ourselves up to lawsuits as we have seen filed in other states.

Joe Komb: Right now there is a tremendous amount of liability for schools the weaker your due process protections are. In more than 70 percent of the cases the money in the judgments was going to the accused students for due process violations. The total amount of money during that two year time frame was 30 million dollars nationwide of which 25 million of which went to accused students. Right to counsel is not going to foreclose the possibility of a lawsuit. It dramatically decrease the odds the universities will lose those law suits if they are providing Robust Process.

Rep. K. Wallman: I understand your purpose of us doing a good job in due process. How often do you accused students say the wrong thing and later on have it be used against them?

Joe Komb: We don't have the terms of data in terms of how often it really happens because you are talking about 18, 19, 20 and 21 year olds for the most part. My office feels across the country between 10-15 calls per week about students in these kinds of situations. Vast majority of the campuses across the country do not allow a lawyer to

speak for them. If you were to talk about the criminal justice system for a second and you knew that in 90 percent of the cases people didn't have representation of lawyers do we think it will come to good results or do you think when people are asked to defend themselves that they are going to make mistakes.

Rep. K. Wallman: Is that 90 percent that didn't have someone to speak on their behalf or did not consult with one? If I am not mistaking the thrust of this is you can hire an attorney and in face that person can speak on your behalf at one of these hearings. So that 90 percent were people who had hired a lawyer or people who had a lawyer that could speak on their behalf?

Joe Komb: A very small percentage of campuses now allow a lawyer to speak on a student's behalf. Either didn't have a lawyer or had a lawyer who wasn't allowed to speak. Setting aside a small percentage either didn't have a lawyer or had one that was not allowed to speak.

Rep. K. Wallman: Are you familiar with the statistic that 1-4 women will be sexually assaulted over the span of their college career?

Joe Komb: I am not only familiar with it but I am intimately familiar with is because I deal with this issue every day. So far that is not what the department of justice is saying and that is not what any of the other statistics are saying that is based on a survey of two universities where they pay people to respond, get a response rate of under 18 percent and they were asking if anyone was ever touched above their clothes in an unwelcome way and counted that not only as sexual assault but in a national debate as rape. It is not only miss leading but is has been abandoned by the actual person who did the study. This bill is about process whether innocent or guilty, this is about process and process needs to be respected no matter how often you think people are actually guilty.

Rep. K. Wallman: I was not arguing that I was just wondering if you were familiar with that statistic. If it is common and under reported; it becomes a reputation issue that can last your whole life. Do you feel that this might have a chilling effect that even further keeps women who are assaulted and may be under resourced from coming forward?

Joe Komb: First the under reporting factor is reporting to police. We need to make sure we get an expert immediately to a victim's right activist.

Rep. K. Wallman: There is not a fiscal note with this bill so I feel like we are putting the horse before the cart. Have you been working with the university system?

Joe Komb: Almost everyone in higher education knows who we are. I have not gone to the higher education system here because we have not gotten any thing in response to this.

Chairman K. Koppelman: Where do you go to get your reputation back?

Joe Komb: That is one of the things that we are trying to address. Having a right to counsel doesn't insure we always get everything right but it probably increases the chance that we get things right more often.

Rep. G. Paur: Your organization focus's a lot of free speech. Would it be fair to call you like ACLU?

Joe Komb: We are very similar to that. We try to take the facts of cases and defended people on speech grounds across the whole spectrum.

Chairman K. Koppelman: If this is becoming such an issue why not wait?

Joe Komb: If you are going to wait to empower schools to have the tools when the wheels of justice are turning slower. That has been debated in Congress now. If it were up to me I would empower schools to give them the tools they need to get this done right. Right to counsel puts more adults in the room that know what they are doing.

Opposition: None

Neutral: None

Murray Sagveen, Chief of Staff, Chancellor's office: I have asked Chris Wilson from NDSU to be here tomorrow and UND so Becky Lamboule will be here. I have statistics on the number of statistics we had in the university system. I will provide it to you. In the last academic year there were 2,740 disciplinary proceedings in the system. UND there were about 1,200 hundred and the same at NDSU. Most of those were for relatively minor offenses. There were a few, 3 or 4 dozen for more serious offenses that could lead to expulsion or suspension. Out of the entire 3,000 disciplinary proceedings per year we are talking about a smaller number. There is a significant due process in the university system and at UND and NDSU they have refined that. (See handout #1& #2) Went over the handouts.

Rep. Maragos: How many of these cases could have led to expulsion or suspension?

Murray Sagveen: I don't know. The bill would provide that a complaint could lead to a suspension or expulsion. That is when the attorney can be provided.

Rep. Maragos: Not Audible

Murray Sagveen: The answer to that is yes, but in alcohol for example it could be you had an open container in the dormitory or property damage. So it could be from the spectrum of not too serious to very serious. If the complaint could lead so expulsion or suspension that is when SB 2150 would be triggered.

Rep. D. Larson: The fiscal note of 880,000 dollars; if there is just a smaller amount that would lead to explosion you have attorneys at those proceedings anyway so I am not sure how you came up with the fiscal note.

Murray Sagveen: Currently the lawyers in the university system do not routinely attend disciplinary proceedings because they are handled by the vice president of student affairs. If you have a situations where a lawyer is now in the process and representing one of the parties we thought that it would be necessary to have a lawyer involved representing the university or college. Currently the attorneys who are working in the university system are fully occupied doing other things. We thought that it might require and attorney to represent the university system if there is an attorney on the other side. The second issue there was a court reporter, because initially the bill provided that the case could be appealed to the district court and we were concerned that there had to be a good record to do that. The Third issue had to do with an administrative law judge. What we wanted to provide is in the due process that there is speedy due process and that we would have an administrative law judge who would hear these hearings for all cases in the university system. I explained to the Senate appropriations committee that we don't know how complicated this is going to be, how much time this is going to require, whether we can use the existing administrative law judges so we requested that funds be provided but they would only be used if we needed to hire another lawyer, court reporter or an administrative law judge.

Rep. D. Larson: You have answered my question, but it doesn't seem logical to me.
It doesn't seem like a judge would be part of this process. It seems like a stretch to me. We did hear in our highlighted case today there was an attorney there during those proceedings so it seems that looked like it will certainly result in an expulsion anyway the university would already have an attorney there representing them. So all of this new staffa and expenditure seems like it is kind of excessive. You did answer it but I don't think it would cost what you were suggesting.

Rep. Lois Delmore: It seems to me right now the facts are here that you are handling this 2,757 if these hearings now without and additional employee. I would assume that for every single disciplinary action that went to a hearing you wouldn't look at one another and say this is close to expulsion so we need someone at every one of these hearings would you? I think that is a large fiscal note when you are now handling them now.

Murray Sagveen: The charges of the 2,700 could have been 150 could have led to suspension or explosion under the bill a student could bring an attorney to speaking on their behalf. Now you have two attorneys advocating in the room and you created a situation where you have two experienced advocates, you may have to have an administrative law judge who knows how to handle that kind of a situation. You are not having two students with an attorney whispering in your ear, you have two experienced lawyers up there arguing and are they going to arguing to someone who Is not law trained. That was the thinking process.

Rep. Lois Delmore: You already have a lawyer arguing on behalf of the victim on many cases. What we are leaving out of the equation is someone who maybe falsely accused. It is already set up on a pretty uneven scale. Why is it that the University of North Dakota and when did this start, does not have expulsion as a sanction?

Murray Sagveen: No I can't answer that.

Rep. L. Klemin: The UND handout does provide for a thorough process. From the testimony we heard this morning it seems that a lot of things she said applied in his case should not have applied if all of these things were in effect then. Is this a new procedure or what?

Murray Sagveen: When I downloaded this from the website I noticed that some of the dates are revisions. I can get the history of this.

Rep. L. Klemin: This provides for an accused person and victim to have a representative present. It says there is a record made and that the parties have the right to that record. We heard they didn't get the record. It says that the parties have the right to examine witnesses and be present and that sort of thing and what we heard today didn't sound that way. So this procedure that is in the UND Code of Student life seems to cover a lot of things that were stated not to be present, has this come about since his case?

Murray Sagveen: I will get the history of this before 10AM tomorrow.

Rep. Maragos: I am astonished that each campus has their set of rules for their disciplinary action committee. What is the rational for not having one standardized set of rules put out by the system office that every campus adheres to?

Murray Sagveen: I asked that same questions to myself. The institutions are involved in the disciplinary proceedings and what I can see is the board established some minimum requirements for the disciplinary proceedings and in retrospect after spending a lot of time on this particular bill and these issues I think it might be helpful to have a more uniformed system across institutions but I did ask myself that same question.

Rep. L. Klemin: Maybe in this bill we should say the university system shall develop a uniform system that applies across the scope of all of the institutions, so they are all doing basically the same thing.

Murray Sagveen: When SB 2150 was introduced that is the first time to my knowledge that this issue came up. Nobody came to the board and said your disciplinary rules are inadequate. This is the first time that this issue came up as to whether the disciplinary policies or due process policies were somehow in adequate so I think it would be useful to have a more system wide approach to this and that is something that the Board of Higher Education could do by itself. I think this bill as triggered some of those discussions.

Rep. Mary Johnson: I don't think it is everyone else's issue to fine tune your policies. Its not up to the parents or someone to bring to your attention that you have to comply. When did the federal right to hearing go into effect? If you are not complying with the federal requirements perhaps you are not doing your job.

Murray Sagveen: I didn't intend that as finger pointing. I did not think UND was not complying with federal policy. I work with the board on policies and often we amend the board policy if an issue comes to the board. This issue hadn't come to the attention of the board. In the University system in the last academic year there were 3,123 complaints,

2,757 hears and I am unaware of any of those hearings that resulted in complaints that came to the board that somehow they were in adequate.

Rep. Mary Johnson: That is what gives me pause.

Rep. K. Wallman: I would refer everyone to the document that Rep. G. Paur handed out earlier. It is from the North Dakota University System website. It appears it is an update to policy or perhaps a new policy that looks like it came in the 500 student affairs, policy number 514 due process requirements and the history at the bottom it says that from the minutes of the meeting June 20, 2013 effective August 1, 2014 and it actually does update. Interestingly number one is each campus will establish it own student disciplinary procedures and so I think it has become kind of apparent that maybe it would be useful to that not to be the case. Having said that it does have a frame work and perhaps it has been updated at this time.

Rep. P. Anderson: Do you believe a person has due process if you have no representation that can speak on your behalf?

Murray Sagveen: It depends on the level of the offense. Yes if it becomes more serious I don't have any disagreement at all what SB 2150 would do.

Rep. P. Anderson: If that could be a felony with prison time should they not have due process to be represented?

Vice Chairman Karls: We just had a resolution earlier onto the university instead and maybe we should include this as part of that study. How does each policy differently treat sexual assault?

Murray Sagveen: Based on Title 9 requirement and involving due process requirements that might be helpful to have everybody have a better understanding of what these complex issues are.

Chairman K. Koppelman: There was a resolution asking the legislative counsel to do an interim study and when we continued to ask the question they said it was something they could do as far as implementing the policy but we just want it studied and so the way we revised that study resolution was to say go do it and call on legislatures, call on law enforcement, call on others to give input and I am sure they would be happy to do so.

Rep. Lois Delmore: That is a worthy idea but most of know how a lot of the most important studies that are passed on the floor of the house are ignored interim committees and sometimes we ask for the information and it is studied it still doesn't come back to us and that is part of the frustration on the part of some of the people involved.

Chairman K. Koppelman: Maybe what we did with it might be more effective that what the original idea called for.

Rep. G. Paur: You mentioned the due process requirements that were adopted in 2013, was there any due process requirements before that?

Murray Sagveen: I am not aware if the board established a minimum requirement. On each campus there were due process and procedural requirement like what you see UND. What policy 514 said it was a directive to each of the campuses that these are minimum standards that you have to have.

Chairman K. Koppelman: What about the fiscal note: does the university system intend to provide a revised fiscal note?

Murray Sagveen: No you don't need to formally request that.

Chairman K. Koppelman: The Administrative Law Judge is housed in the office administrative hearings. I am still perplexed as to why you would think you need to hire an ALJ or is that simply a cost that you were talking about encoring? Agencies don't typically hire their own administrative law judges.

Rep. D. Larson: If the university is hiring the judge does the judge work for the university?

Chairman K. Koppelman: Office of Administrative Hearing doesn't adjudicate and they make recommendations. Say there is a complaint lodged with the Dept. of Human Services With regard to the criminal charge and expulsion discussion, do all charges or acquisitions automatically rise to the level of suspension of expulsion? Do all offenses that rise to the level of suspension and explosion? The footnote that says #2 is noted. Rep Klemin on page 2 of your handout #1 item number 2 says that the opportunity to appear alone or with a process advisor and or personal advisor. Is that an attorney? Could that included defense counsel? Is that the intent or is it some other kind of individual.

Murray Sagveen: They are allowed to advise the student whether it is an attorney or not.

Rep. L. Klemin: Not Audible.

Chairman K. Koppelman: Item #3 to challenge one member of the panel for bias at the start of a hearing and one member.

Murray Sagveen: That is a good question for Chris.

Chairman K. Koppelman: Item #7 to have access to the record of the hearing after all proceedings are complete and we heard today that records aren't often kept, so is it the intent to always have records from now on?

Murray Sagveen: As far as I know there are records retained and they are retained in an ordinance with their record retention schedule with the university. Iwas surprised by the testimony's here.

Chairman K. Koppelman: Those are things that I think tomorrow we are going to want to press on a little bit with your legal counsel.

Rep. L. Klemin: These amendments provided by Senator Casper; are these your amendments?

Murray Sagveen: We red lined the bill and Senator Casper had agreed with most of the things on his handout.

Rep. L. Klemin: I see this bill even with the revision here being a procedure that doesn't comport with even what's in this UND handout.

Murray Sagveen: It was my understanding that can there be an attorney or advocate at the hearing of this bill and that is the primary issue

Rep. L. Klemin: The second one was appeal. The way the UND procedure reads that is not the case. One party makes the initial decision and if you do appeal it goes to vice president of student affairs.

Murray Sagveen: I think this whole discussion has been very profitable. Everyone wants the right thing for the students at our institutions. We want to be sure they have due process rights. If it is a minor offense it can be handle in a way that is has in the past, if it is a major offense I think we need to look at how those issues are handled. The entire discussion has been very helpful. I would be surprised if the board didn't make some changes that is has as a result of the discussion.

Recessed hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2150
3/24/2015
25348

☐ Subcommittee
☐ Conference Committee

Amanda Musch

Explanation or reason for introduction of bill/resolution:

Relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

Minutes:

Chairman K. Koppelman: Reopened the hearing on SB 2150.

Mr. Sagveen: University Chancellor: One question was when was the code of UND life handed out. 2012 refers to the date it was put online. It has been around for a couple decades in its present form. The second issue had to do with the chart and UND showing no expulsions. I called the dean of students at UND and he said we do not expel students, but we do indefinitely suspend them. It is similar but not the same. Another question about why did the board of education adopt the 514 and that was at the request of the student association at 2013. The student association adopted a resolution. So I would like to introduce you to Chris Wilson now.

Chris Wilson, General Counsel of ND System in Fargo: When a student gets in trouble it usually starts in two ways. There is a complaint filed by someone or the university becomes aware through media. The situation is brought before our student affairs division who investigates the matter. Each of the schools of the 11 institutions has slightly different processes. Different processes are due to resources and sophistication. At NDSU and UND we have larger resources. At both there are two levels of appeals. I will be talking about NDSU's process. The investigation usually shows up a violation of student conduct and the student is notified in writing what the violation is. If it is a minor issue it is handled with administrative process. If it is a more serious issue that involves suspension or explosion the sanction is held in advance until the time all the appears have expired. The appeal is to the dean of students and he has the ability to overturn the decision or lessen the charge. After the dean level reviews, the student will still have another opportunity to appeal. Then it goes to the Vice President of Student Affairs refers it to a committee. Once that committee has it made its recommendation to the Vice President, the VP will render his decision. He can do the same things that the dean can do.

Chairman K. Koppelman: Mr. Sagveen informed us yesterday talking about UND's policy and that there is no blanket policy for this system wide. He introduced you as the general council for NDSU. You said you are the general council from the university system in Fargo with authority over NDSU and NDSCS. Is what you're describing the process at both of them?

Chris Wilson: The smaller universities don't have as much resources. People where many hats... Then the VP makes his decision. It is only at that point that the suspension or expulsion goes into effect. If the student is deemed to be a danger to campus or themselves, the campus can put in place immediate suspension which locks the purpose from campus through the process. That is very rare.

Rep. Lois Delmore: Who makes that decision? I suppose it has to be made very quickly.

Chris Wilson: That is the Dean of Students. (at NDSU) It usually stays in place until the hearing. If you put an interim suspension in place you expedite the hearing process.

Rep. D. Larson: How many hearings that could result in suspension have you had in a year?

Chris Wilson: I don't have that number. At NDSU the number of suspensions is about three.

Rep. D. Larson: Suspend-able cases; give me a ball park figure?

Chris Wilson: IT would be a multiple of that because it happens when the offense is actually includes suspension but determined based on the facts and factors that it wasn't as serious as it first appeared.

Rep. D. Larson: Of those suspend-able cases how many times has the appeal overturned the initial charge?

Chris Wilson: I am not sure. These are numbers we have to crunch. I don't have the data with me.

Rep. D. Larson: It would seem to me if you are appealing to the same university that is bring the charge to the same people that it would say I have confidence in what you're telling me so I will take that and use that. I would guess the overturning would be rare.

Chris Wilson: Suspensions are rare. It does happen though. We want to be involved in educating the next generation. It is a very serious thing when we suspend. At each level we ask if it really needs to be done. It is not the first thing we want to do. You want to support the employee and the student.

Rep. D. Larson: If I were to be called to jury duty I would be excused because there is confidence in the work. That is why I am thinking that your reports would be similar?

Chris Wilson: We do internal hearings all the time. I don't think anyone in the appeal processes takes their duty lightly. There is that overarching concept of I want to make it right.

Rep. Lois Delmore: What would be the reasons for immediate expulsion?

Chris Wilson: It is when some represents a danger. It is violence. We have to be concerned with the safety of the campus.

Rep. Lois Delmore: Sexual assault would not be included?

Chris Wilson: Depends on the seriousness of the offense.

Rep. Lois Delmore: Do you record all the meetings?

Chris Wilson: Yes we record the hearings not the initial meeting with the student.

Rep. P. Anderson: Are you in favor of SB 2150?

Chris Wilson: Yes initially we were. We wanted to make sure no student ever goes through our process and doesn't have on option of proving that they are not responsible. As drafted the initial version created problems. It would have been difficult for us to overcome administratively. We have been working with the sponsors to have them explain what they are dealing with and what they want to prevent. We have many cases a year that are going through the system without a problem. How do we reconcile those two situations? We came out with cases involving expulsion is probably a good thing for the ones involved. It causes problems when you talk about general cases. Working with the sponsors we put in an appeal process held over for a longer time period if new evidence comes to light so the student can come back and look at this. We use a lower standard than a criminal court. At NDSU our Dean has been there for 8 years and she has never had a rehearing case.

Rep. P. Anderson: You don't know that it doesn't happen on other universities as far as the hearings years later. You only know what happens at NDSU.

Chris Wilson: At other places I have been to there be rehearing options.

Rep. P. Anderson: So the bill we got from the Senate you are OK with?

Chris Wilson: We are working on the language with proposed amendments.

Chairman K. Koppelman: We have proposals that were made by the university system. I think we will request a final recommendation for amendments so that we can take a look at them.

Rep. K. Wallman: This bill doesn't prevent anyone from being wrongly accused of anything at a campus. This doesn't prevent a person from having wrong accusations following their reputations? There are minimum requirements but there is no policy across the state that is

uniform. You say there are different amounts of resources. One of the reasons we may not have a more thorough due process is because of the different types?

Chris Wilson: There is no single standard out there. No it doesn't. You can be criminally charged. We all follow the same basic pattern. That is the way it is across the country. How you handle your hearings is what is important. Our processes tend to be very laid out. They are laid out based upon federal law. NDUS has a policy about providing due process but that is superfluous because federal law requires it. We cannot expel someone without providing due process of law. If we do that someone could file a lawsuit.

Rep. K. Wallman: There is an academic process and a legal process. This bill is saying you can have legal representation speaking on behalf at these hearings, but we are not providing that for everyone. Which makes it difficult for a victim who can't hire an attorney for themselves to do so? I also though it is a red cross examination can take place in this law?

Chris Wilson: That examination can't happen. Part of this is complicated by the fact that is complicated by a federal law of Title 9. Title 9 is a federal law that is associated with athletics. It has been expanded because of the other aspect of the prevention of sexual assault and assault on campuses. Someone came up with the Dear Colleague letter and that ramped up the obligations that the universities have to pursue. One concept is the equality for the victims of sexual assault cases in our student disciplinary cases. Whatever options we provide to the perpetrator we have to give to the victim. The attorney cannot be allow victims questions directly to the students. Whatever options we provide to an alleged perpetuator we have to provide the victim. Certainly there will be some inequity there if one person cannot afford an attorney. This allows the attorney to participate only to the same extend that the student would.

Rep. K. Wallman: I was wondering about the equity issue and if that could explain the fiscal note?

Rep. Lois Delmore: We are looking at fairness for all the parties. This is an intimidating process. Many of these victims are 18 or 19 years old. It looks like now we are trying to favor the victim's side. I am surprised NDSU and UND-should have a lot more that do the same process. If they do something serious enough to get kicked out of college things should be done. Why isn't the process you go through at both universities looking the same?

Chris Wilson: It is more similar than more dissimilar. Our process is largely the same. Universities are allowed to be dissimilar. A lot of things depend on terminology. They all go to an administrative committee. Institutions are different. If they meet due process they van have independence.

Rep. Lois Delmore: It looks like a lot of the complaints that come forward are alcohol related? What would be the circumstance you would see for someone to be expelled for alcohol? Has it happened?

Chris Wilson: I don't know if there is a certain number of cases. Previously we had a three and you're out rule but it doesn't exist at NDSU or UND. Usually alcohol isn't the reason for the suspension or expulsion except for the alcohol cause the conduct. Typically things are associated with alcohol.

Rep. Lois Delmore: I still maintain that having some presentation is better than having no one there; but they can't participate.

Chris Wilson: That is what exists across the country. Our current system allows for an attorney to be there.

Rep. Lois Delmore: Just because an attorney can be in the room that doesn't mean anything.

Chris Wilson: When we talk about hearings we consider them educational. We are not out to get our students. We are out to teach them.

Rep. G. Paur: I believe this is a case of fairness. With the example in the Warren case it exemplifies this. Currently an attorney can advise the student during the proceedings can't he? Instead of getting this up to where I have an active attorney for myself against the university, if we lower this and making this into a trial procedure, how about if we back off and keep my ability to have my council to advise me but restricting the universities attorney to just an advisory role and not allow them to participate in the process and leave it between the two. Lower the whole process instead of escalating it.

Chris Wilson: Yes. During a hearing I am not allowed to speak. I provide advice the same way the alleged perpetrator's attorney provides. In the policy it says if an attorney for an alleged perpetrator participates they can be warned and then removed. Same thing goes for me.

Rep. G. Paur: If that practice was universal across the university system that is what is anticipated currently.

Chris Wilson: If you got rid of this bill right now it would be anticipated the attorney would not participate at NDSU.

Rep. G. Paur: It seems more practical not to have the attorney's participate.

Chris Wilson: My role is to provide guidance. I am there to balance the other attorney.

Rep. D. Larson: When I was in college at twenty years old I felt the college had all the power and I had none. A teacher was going to kick me out of class because I got injured when they didn't follow safety procedures. I went to the head of the department and they said they could get me into class but they can't tell anyone or I will be labeled a trouble maker. Trouble makers find it hard to graduate. I do think there is an imbalance of power in the university system because the students are inexperienced. Your speech would be intimidating to a college student. I do hope you are supportive of students being able to be

fully supported with their own attorney if they are accused of something that could change their future.

Rep. L. Klemin: The initial administrative hearing; who conducts that?

Chris Wilson: The student has a choice of going in front of an administrator within the student affairs department or a judicial conduct board. If it is a non-suspension case then is an administrator hearing the whole process?

Rep. L. Klemin: The initial hearing is on front of a staff member of Student Affairs and then to the Dean of Students. We had testimony yesterday that we had a choice of an attorney or a non-attorney advocate who may fully participate. What does fully participate mean? Fully-participate does not include the right to examine witnesses or cross examine them.

Chris Wilson: That means to participate to the same extent that any student could participate in the hearing themselves.

Rep. L. Klemin: They bill says they may fully participate in any disciplinary proceeding only to the extent as what you said.

Chris Wilson: Witnesses are questioned by hearing officers and the students who are alleged perpetrators are allowed to submit questions to the hearing officer who puts the questions to the victims. We don't allow direct cross examination from a perpetrator to a victim.

Rep. L. Klemin: So there is a difference in what you are saying and what the bill says.

Chris Wilson: This wouldn't change how the conduct of the hearing goes. Right now the attorney whispers to the student and the student says this is the question I want you to ask the victim. Instead of going from the attorney to the ear of the perpetrator the hearing officer, this would allow the attorney to ask the hearing officer directly.

Rep. L. Klemin: When it says in this bill the attorney may fully participate, that means the attorney may fully participate but only to the same extent that the student would be allowed to participate which does not include being able to cross examine witnesses.

Chris Wilson: Yes.

Rep. L. Klemin: You understand that is not what this bill says and this is not how it was interpreted yesterday.

Chris Wilson: We are not a criminal court. We have a very different process.
The attorney would be allowed to participate but direct cross examination is not allowed.

Rep. L. Klemin: We are drafting a bill here and we need to put exactly what we need to and put it in here.

Chris Wilson: You are right. The university sets the hearing process.

Rep. L. Klemin: This right does not apply to academic misconduct. Can academic misconduct lead to expulsion?

Chris Wilson: Academic expulsion is handled differently and it follows a different process.

Rep. L. Klemin: This bill doesn't apply to the academic side of the house at all? This whole procedure doesn't involve academic side.

Chris Wilson: Yes that is right. Nothing in that bill applies to academic misconduct.

Rep. K. Wallman: In your opinion do you feel there is work to be done to make this consistent?

Chris Wilson: We spend a lot of time looking at our due process. We could use a consistent rehearing process.

Rep. Brabandt: Do you feel that your existing system is working well at NDSU?

Chris Wilson: Yes

Rep. P. Anderson: The student has a choice; who advises the student?

Chris Wilson: Nothing prevents the student having an attorney advisor or whoever they would like to. Before anything they are explained the process and their options.

Rep. P. Anderson: Why isn't there one choice for serious charges?

Chris Wilson: There are pros and cons going either way. One choice may be harder on a person.

Rep. Mary Johnson: Part of our concern is we also need to comply with federal law that a victim cannot be directly cross examined by alleged perpetrators. Once you have a lawyer that represents the alleged perpetrator can ask questions on the federal law?

Chris Wilson: A student can ask questions to the hearing officer or the panel; then turn around and ask the witness the questions. Right now the attorney would speak to his client to ask this question. If the attorney participates they will ask the questions of the hearing officer or panel and then the hearing officer will ask the witness.

Rep. Mary Johnson: I thought the attorney couldn't speak? Right now? Are you familiar with the case at UND?

Chris Wilson: Right now the attorney would speak with the client about what to ask and then the student would ask the hearing officer. I am not familiar with the case.

Rep. Mary Johnson: Earlier you said the rules of evidence don't apply at these hearings; however we heard testimony that the general council at UND was there and objected

fervently to relevance and what not that are rules of evidence. Was that a mistake at UND? Assuming it's true?

Chris Wilson: They are strict construction. I don't know what happened. The rules of evidence are basically followed. Rules do not apply as the same level as in a court.

Rep. Mary Johnson: So do they pick and choose the rules they follow? Is it case by case?

Chris Wilson: They will largely follow the rules of evidence but it is more loosely followed than in a court.

Rep. Mary Johnson: So a muted attorney can't say which rule of evidences can or can't be applicable. They also can't speak on it.

Chris Wilson: These are not criminal courts. They can lean over their client and have then make an argument. Right now the attorney is not allowed to participate.

Rep. G. Paur: In section 2 any student organization can't be criminally charged. Do you think that is appropriate in this bill?

Chris Wilson: The evidence can be disciplined but they could not be criminally charged. Usually charges against them end with loss of privileges. Years ago there was one and the dean of students had been there 8 years and had not seen a suspension case. It doesn't happen often but if they want to have an attorney there we didn't see it as a problem because it its rarity.

Rep. Brabandt: if this bill is passed will it drag the process out and how long do these hearings normally last?

Chris Wilson: A few months it takes for the whole thing to pan out. It does depend on the complexity though. A serious case is a few months and a non-serious case could be closer to a couple weeks.

Rep. Brabandt: So the student remains in school during the process?

Chris Wilson: Unless it is a threat to campus; otherwise he is taking classes. We may move people around and things like that.

Rep. Brabandt: Will this bill drag the process out?

Chris Wilson: It might make the cases more complicated. That is our concern and then we will have attorney's representing the student. We do not have enough resources so it will complicate the process. It would be turning a straight forward process into a criminal court. We may need more resources to get an accurate case record. We don't regularly go to these hearings. We would have to start making accommodations. We can't represent both parties so we may have to get more resources. It will greatly complex the case if people use it to the full extent.

Rep. Mary Johnson: On this grid that was handed to you were they three sexual misconduct cases?

Chris Wilson: I am not sure. We have due process on the academic

Rep. Mary Johnson: Your due process on the academic side, how has the US supreme court addressed that issue?

Chris Wilson: I am not sure but I am assuming it will fall under the Goss v. Lopez case. Meaning that you have a property interest in your public schooling. Whether you get suspended for assault or because it was your third plagiarism you still have to have some due process. We have due process on the academic misconduct run it is just not in the student affairs area. It is a separate process.

Rep. Mary Johnson: Could we have Mr. Comb answer some questions?

Rep. Lois Delmore: If someone feels denied due process we could be facing something a lot more expensive than providing a procedure. Would you concur with that?

Chris Wilson: Our due process as it stands right now meets all federal requirements. What we are talking about with this bill that is gong above the standard. At NDSU our process is fully compliant with requirements.

Rep. Lois Delmore: You have no fear of a lawsuit coming from a parent or student?

Chris Wilson: I am comfortable.

Joe Cohn, Legislative and policy director; FIRE: You don't want a potential rape victim directly confronted by the person who they believe raped them. The rules is that they must be questioned through a panel or through an advisor/representative. Asking them specific questions from a lawyer complies with the department of education's rules because it prevents it from having the student ask the questions. It is helpful to have a person ask questions through a lawyer as opposed through a panel because panels often don't understand where a leader is going or leading with the question. There is nothing unlawful about restricting it to a panel but it isn't the best because it isn't as effective. In terms of the question you are asking about the academic difference- the Supreme Court and others have given broader latitude to schools because of their expertise in academic freedom cases. That is why the legislation exempts the academic cases directly. I think the other point that needs to be discussed is the vowa regulations that came out. The department of education was asked 'if you provide a right to have a lawyer to one side must you provide it to both?' and they said yes. Same rights to both sides are required. Then they were asked 'what if one can afford and the other can't, is the school obligated to pay for the second person?' they say in the regulations we don't have the authority to require a school to provide the council to the other side in that circumstance- we can only require them to make sure that both sides have that right. (I can email that rule to you) The rule they adopted federally was a potted plant rule. It also only applies to the title 9 cases. You also asked why not knock it down instead of up and the answer is because of the intersection of it with criminal law even though they are not sending someone to jail the conclusion we

know about the admissibility issues. Removing the lawyers from the process on both sides only makes sure that you have the amendment violations that you have these kids talking on the records talking about felony conduct in a way that can be used to put them in jail for the rest of their lives. You can't ratchet it down because they are deciding complex matters. The last thing I would say is that with the edits the university system has made we are all in agreement that lawyers should be allowed to actively participate.

Chairman K. Koppelman: You said suspicion and expulsion cases but you are only talking about nonacademic cases?

Joe Cohn: Yes

Rep. K. Wallman: The ruling at the federal level is that attorneys can participate in the potted plant sense. The federal rule didn't say that they can be active participants right?

Joe Cohn: Right. That is what the violence against women at regulations is.

Rep. K. Wallman: This will allow for active participation. Which means anyone can hire an attorney. What it doesn't provide for that. Not providing for an attorney for someone who can't afford one means we are codifying an inherent inequity when we do this. We don't know that one side or the other will be able to afford that same issue. Your organization is advocating for due process. How is it affecting due process if only one side is allowed that but not provided that?

Joe Cohn: Right now you have that inequity. Any university can send a lawyer against a student right now and that is the person that can be punished at the hearing. No matter what happens at the hearing the victim can't be expelled, punished, or whatever. I agree that it is better if both sides have attorneys. If you wanted to put forward a bill that says we will fund this too I would support it as well. I don't get to deal with perfect; I deal with what is best. The other aspect here which I think is so crucial is to understand that the regulation that came out of the actual violence against women act. The regulations came out of the Act of Violence against Women. They had one sentence that said students may no longer prohibit from choosing the advisor of their choice. It didn't say anything more. It can say we cannot require by this regulation that allows them to participate because congress didn't say one way or another. Because congress was silent we can't overturn schools rules that say they can be potted plants. That isn't a judgment on congresses point that it is the right way to go, it means they didn't address it. The department of education didn't have the authority to pretend that they did. Here you are asked as a state to address this question because you know that in each one of those cases you have an inequity against a person who can actually face life consequences at that moment by the results of what is decided at that room. We are trying to fix it so that that person has the right to have representation. It is better if both students should have representation because it is helpful to the process but I don't think it is due process because due process is about rights of accused people.

Rep. L. Klemin: There have been a lot of reference to federal laws I hope you can get us citations to these references.

Joe Cohn: I will do that.

Chairman K. Koppelman: Define hearing officer for me.

Chris Wilson: It is stated within our policy that you have two options to go in front of a hearing officer and that certain employees who are designated as the hearing officer or the judicial conduct board which is a specified group of students that are hired and trained every year to sit on that board as some students are selected for each panel.

Chairman K. Koppelman: Then the decision would be binding except for appeal?

Chris Wilson: It is subject to two levels of appeal if it is a suspension or expulsion case. If it is any case you have one level of appeals.

Chairman K. Koppelman: I think the confusion is what are you proposing here?

Chris Wilson: These are student affairs officials and they are trained. This is the field they have gone into. When I say hearing officer it is somebody who is familiar with student conduct issues. They are internal to NDSU and it is their job. They are within our student affairs and handle the hearings.

Chairman K. Koppelman: They are planning to provide a new fiscal note?

Chris Wilson: That is our process now. We don't know the level of complexity that it could become when attorneys start participating. Attorneys complicate things and the hearings will become more complicated. We don't know how complex it could get.

Chairman K. Koppelman: The fiscal note shows employing new employees.

Chris Wilson: When this bill first came to us the first draft applied to all cases.

Chairman K. Koppelman: Does NDSU do expulsions? How often does appeals have reversals?

Chris Wilson: Yes they do. Statistically I don't know. It does happen and when it does the sanction is lowered.

Chairman K. Koppelman: This is not a juridical proceeding yet we are using terms of conviction. Someone talked about the ideas of how they vision it. D oyou see it that same as that while it may be part of what is avoided in the process that with this the attorney could question an accuser?

Chris Wilson: I do not. We found the language from the department of education and OCR strongly discourages a school from allowing the parties to partially or cross examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to to question or complain directly may be traumatic or intimidating and may perpetrate a hostile environment. A school may choose instead to allow the parties to submit questions to a trained third party to ask the questions on their behalf. OCR recommends that the third

party screen the questions submitted by the parties and ask only those it deems appropriate and relevant.

Chairman K. Koppelman: So if someone is represented by counsel, the council could ask a question. It wouldn't be direct.

Chris Wilson: I don't anticipate that this bill would change the fact that we would not allow a direct cross examination of the victims.

Chairman K. Koppelman: We may want clarity on that. Academic matters are handled differently. Is that the same across the board?

Chris Wilson: I think so.

Chairman K. Koppelman: Is a criminal offense that could result in a criminal charge always subject to either suspension or expulsion? If someone is charged with an offense on the campus- are those violations subject to either?

Chris Wilson: No- you could have a criminal charge that doesn't result in either. It depends on the seriousness. A student who drinks underage on the campus is violating state law and subject to criminal charges.

Chairman K. Koppelman: We talked about making a record and you said earlier that these hearings are audio recorded? Is there something you see in the bill that an audio recording would not suffice for a record?

Chris Wilson: We were discussing an appeal process for a stenographer so we were trying to have that.

Rep. K. Wallman: If someone is sexually assaulted is there something in policy that tells that student who to go to first? Would they automatically go to the police? Who are they told to report to?

Chris Wilson: That is a Title 9 issue and one of the things we have done is expanding it to who you would talk to. We do title 9 training for all our employees and have ramped up awareness. One of the controversial aspects has to deal with when a student reports it. A person cannot guarantee confidentiality to that student. The student needs to be aware of that becomes if may be a repeat offender and we have a duty to investigate and determine whether or not that person had other offences. It doesn't matter if the victim doesn't want us to, we can't guarantee confidentiality. We have a person on campus who deals specifically with that and helps out. We have many sources available.

Rep. K. Wallman: If a student goes to a rape and abuse centers are they mandated to report it back to the campus?

Chris Wilson: Correct. They, the doctors on campus, or the counseling centers do not.

Rep. Mary Johnson: You got to how they can appeal to the Vice Chairman. Are they all different people?

Chris Wilson: No it is a hearing officer who can sometimes be an investigator if it is a minor one. On the more complicated ones the Dean reviews the case and the student can provide their written appeal and the it goes up to the Vice President and that committee is all new and they make their recommendations and then the VP makes his recommendation. That is the last level of appeal and the sanction goes into effect at that point.

Rep. Mary Johnson: You said there was an extra step where upon new evidence somewhere down the road... that is when the sanction goes into affect?

Chris Wilson: That is our internal process. It is a couple of months. We use a lower standard for the criminal court. They take another year or more before it finalizes its investigation and everything. Then there is a new situation where new evidence comes to light and it turns out you had someone who was lying. That is when we have a rehearing request.

Chairman K. Koppelman: Was there anything else you wanted to share with the committee?

Chris Wilson: When we make policies we have to make it work for the thousands of cases.

Chairman K. Koppelman: I think that is the reason for the bill and the recognition the victim needs to be able to come forward.

Rep. K. Wallman: This bill allows people to be legally represented if they can afford it- those who can't aren't appointed someone to represent someone in this bill. Do you feel that if it is put in place it will be inequitable process as it is now as equitable?

Chris Wilson: There are certainly situations that could arise where we have inequitable situation where someone is an aggressor and has financial resources can hire an attorney. How that plays out I don't know. There is a chilling impact of a victim being questioned by an attorney rather than what has previously been an educational student process hearing is now going to be subject to cross examination, getting free discovery in a criminal case might have a chilling impact on victims willingness to come forward.

Chairman K. Koppelman: You did response to the fiscal note earlier?

Chris Wilson: I don't know what the deal is on that.

Chairman Koppelman: Hearing closed.

Senator Casper is working on amendments

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2150
3/25/2015
25420

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes: Proposed Amendments 1,2; Testimony 3,4

Chairman K. Koppelman: Reopened the meeting on SB 2150. Senator Casper had a proposed amendment 15.0596.03001(See proposed amendment #1) The amendment before us was agreed upon between the university system and Senator Casper and or the other bill sponsors.

Motion made to Motion to move the proposed amendment .03001 by Rep. D. Larson: Seconded by Rep. P. Anderson:

Discussion:

Chairman K. Koppelman: Went over the proposed amendment.

Discussion: none

Voice vote carried.

Chairman K. Koppelman: Upon listening to Mr. Wilson yesterday the appeal is not necessarily handled by the same body at the institution. I am wondering if that language should be there because it makes it the way it has to work then. Maybe we could just leave it out.

Rep. Lois Delmore: There is no continuity with what they are doing. We have seen evidence during these hearings so maybe we have to spell it out for them because they can't work together to do it themselves.

Chairman K. Koppelman: Do you think it work to say on line 5, to the same institution. That way it could mean this to the same body or it could mean that it is a different group that hears the appeal.

Rep. Lois Delmore: Sometimes when we look at appeal s we are looking for a higher court. I don't know if it is necessarily bad to have someone look at it.

Rep. L. Klemin: I don't like the word appeal in here. If we instead said that they may request an administrative review of the decision by the institution. If there was new evidence then they could request a new hearing. If we said something like they may request an administrative review of the decision by the institution.

Chairman K. Koppelman: I am not sure administrative review is good again. What we heard yesterday at NDSU is that the administrative review is different than the review by the board of students that they have; maybe just the word review?

Rep. K. Hawken: My concern with all of this is we are placing the appeal piece should not be the same people ever. If it is to the level where the school has a lawyer the acquiesced should have one as well. If it is the kind of case that should be in a criminal court it would be in a criminal court and then come back to the college?

Chairman K. Koppelman: We could require that. We could say must be afforded an opportunity for a review by the institution for a period of one year after the notice given by the institution.

Rep. L. Klemin: They have a very detailed procedure that was handed out by UND. NDSU's is similar and we are not spelling all that out in this so it should be broadly stated so they can fill in those blanks.

Chairman K. Koppelman: It does specify the timeframe and review.

Rep. L. Klemin: Where ever the word appeal is used in subsequent lines we would have to make a corresponding change.

Chairman K. Koppelman: It is up to them at this point whether

Rep. L. Klemin: When subsequent appeal would be changed to review in lines 12, 18, 19.

Chairman K. Koppelman: Last word on line 17.

Rep. G. Paur: In the code of student life it says the students have the rights to appeal the decision of the SRC.

Rep. P. Anderson: As a lay person I don't mind the word appeal. I think review is vague.

Chairman K. Koppelman: Let's leave the appeal language off the discussion for the moment and look at the other change that we discussed.

Rep. L. Klemin: The words institution decision; if we just take out institution so that leaves it opens.

Rep. Lois Delmore: I agree with Rep. Hawken that I would like it to be a different entity, but I don't know if we can mandate that.

Chairman K. Koppelman: It is important that the appeal go to the entity and not the court. Maybe we should have this written up first so we will do that before we act on it.

Rep. G. Paur: (See proposed amendment #2) This proposed amendment would mirror the NDSU policies. It would keep attorneys with the university and student in advisory capacities and no allow direct interrogation by either one.

Rep. P. Anderson: Mr. Wilson was fine with the amended bill.

Chairman K. Koppelman: I am not sure if we amend the bill in this fashion what it would accomplish? I don't know what this would do right now?

Rep. G. Paur: This would require all the universities to operate like NDSU.

Rep. K. Wallman: Mr. Wilson doesn't think the NDSU system is broken. He does not know why the re appeal process did not happen in that one UND case. I think this would help it be consistent. This was just one instant in the whole state so I am not sure it is wise to put something in law?

Rep. Mary Johnson: What we are trying to do is pass constitutional mustard provided by the Supreme Court of the US. Singularly the one most important factor that gets you over the constitutional hump is to have a fully participating attorney present that represents you.

Rep. L. Klemin: On that fully participate issue that was in the North Carolina bill conflicts with federal rules. It would tie institutions hands. We need to look at those rules.

Chairman K. Koppelman: We need to do this soon. It is a physical note bill.

Rep. L. Klemin: if we leave it the way it is we will have time to look at this later.

Rep. G. Paur: I don't know if we have to do this for constitutionality.

Rep. K. Hawken: In the issue that brought the bill before us the attorney for the institution was less than professional. If neither one of them can participate, but they can be there. Then that makes a level playing field. We can't have it both ways.

Rep. L. Klemin: I am looking at more information. I don't know how we can make an informed decision. It might conflict with federal law.

Chairman K. Koppelman: At this late date I don't know if we can hold this much longer. I don't coward when someone threatens in an email that there is a rule somewhere where this might run afoul. Especially when it is a constitutional principal or right we are trying to uphold.

Rep. D. Larson: Overall I feel when parents and families save thousands of dollars for students to go to college; if they are falsely acquiesced of something this is something that will affect their life. If they are labeled like this boy was as a sex offender that should be

able to be defended. I am not insensitive to the other side of that where there is truly a victim of a sexual assault being held to something so they then feel like they are being attacked a second time. I think that is being taken care of by an attorney being in the middle of it. The person that is overseeing this process also has some control over the way the process goes. I think we need to be able to look out for the interest of both parties.

Rep. Lois Delmore: I think we need to contact Mr. Wilson too. I asked him if he was worried about any type of law suits coming and he was very comfortable they had set up was law suit proof.

Rep. K. Wallman: Under the university system Chris Wilson is NDSU and there is an attorney in Grand Forks that we didn't hear from. There is a woman that represents institutions that we haven't heard from.

Chairman K. Koppelman: She was in the room and she did not testify when I asked for further testimony. You can call her but we don't want to reopen the hearing.

Rep. L. Klemin: I specifically asked Mr. Wilson about the words fully participate and he said that the attorney can fully participate to the same extent as the student and there was no cross examination or examination of witness allowed. They had this other procedure where they could ask the hearing officer to ask a question. It is misleading in this bill and I think we need to resolve this.

Chairman K. Koppelman: You viewed fully participate the way most of us would in plain language and he believed it meant something else even in this bill.

Rep. D. Larson: My comments were directed at Rep. Paur's amendments.

Chairman K. Koppelman: Rep. Paur do you wish to move your amendment?

Rep. G. Paur: Not at this time.

Chairman K. Koppelman: False acquisitions were brought out. One of the things occurred to me could the institution wait and see if it is a criminal action. ND is a preliminary hearing state and that means when these charges are made there is a preliminary hearing on the legal side and that is a lot quicker than the result of a trial. At that level then it is determined whether the case goes forward to a trial. That is a whole different approach.

Rep. G. Paur: I did bring up your initial thing about criminal charges earlier and that was rejected. If there is enough evidence I find that appealing. Then the university would have a justifiable right to expel them.

Rep. Lois Delmore: I don't know if we can add another layer to the bill at this stage of the game.

Rep. L. Klemin: The State Board of Higher Education has left it up to each university to process these. One thing we could put in this bill was require them to develop a uniform procedure to be used throughout the system.

(Testimony 3 & 4 handed out at the meeting.)

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2150
3/30/2015
25593

☐ Subcommittee
☐ Conference Committee

Amanda Musselman

Relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

Minutes: Attachment 1, 2, 3, 4, 5

Chairman K. Koppelman: Opened the meeting on SB 2150. I have requested a revised fiscal note.

Rep. D. Larson: Are we supposed to be looking at the 03 or 02 version?

Rep. L. Klemin: 03. (See proposed amendment #1) Went through the Federal Register (handouts 2, 3) and through the proposed amendment for clarification. I move the amendments.

Chairman K. Koppelman: I think this includes a lot of the things we have already amended and adopted. Page 1, line 3 is new, the page 2 line 12 is new, page 1 line 23 is new, page 2 line 5 is new, page 2 line 6 is partially new, page 2 line after line 22 is new, subsection 6 wording is partially new and then section 2. Went through all the amendments here that are new other than Casper's already adopted amendments.

Rep. D. Larson: Did we already adopt senator Kasper's amendments?

Chairman Koppelman: Yes

Representative Johnson: I would like to second the motion.

Rep. G. Paur: I was doing research since our last meeting and it appears there are two types of disciplinary hearings; one that addressed sexual misconduct under title 9 of the feds and then there is everything else. Generally the disciplinary hearings are a parent trying to guide a child, but as far as the feds are concerns as long as there isn't a deviation from the universities policies it is not a violation of due process. The due process is following the universities' regulations. We are not in the legal system, we are in the universities.

Rep. P. Anderson: The federal register says the institutions can establish to what extent the advisor may participate in the proceedings and we are saying the institution can't decide, we are deciding, and it is fully participated by everybody. Is that the difference?

Rep. L. Klemin: In essence even though the federal rules say the universities can impose certain restrictions, our bill is saying yes but there are certain things that the legislature deems is appropriate to include in that procedure.

Rep. P. Anderson: The Federal Register doesn't say fully participate.

Rep. L. Klemin: That is correct. Since we had a difference of opinion by the people who testified as to what fully participate means, I put a definition in there.

Rep. D. Larson: I certainly think the amendments proposed by Rep. Klemin are in keeping with the spirit of what we wanted to do. After it was brought to our attention that there are some serious injustices happening when someone makes a false accusation and that is what this bill is hoping to address. The amendments look to be in line with the intent.

Rep. G. Paur: When we adjourned before I thought we had agreed that those two lines on the amendment that say 'before the disciplinary proceeding is scheduled, the institution shall inform the student in writing the student's rights under this section'. Should that be incorporated into the current amendment?

Chairman K. Koppelman: Yes I agree with that. I think we should do another amendment though.

Rep. K. Wallman: I have a question on fully participate- includes the opportunity to make opening and closing statements who examine and cross examine witnesses- and that includes the accuser, that they count in that category as a witness?

Rep. L. Klemin: Yes

Rep. K. Wallman: At the end of section 6 on page 3 it says and to provide simultaneous notification of the institutions procedures for the accuser and accuse. I think that kind of speaks to Representative Paur's comment. The beginning sentence does not affect the obligation of an institution to provide. I was confused by the wording. To me once you read this you have to refer back to what the federal register says? Why did you word it this way? This section does not affect the obligation of an institution and then it lists all those things.

Chairman K. Koppelman: That first sentence has wording that was in the proposed changes that the university system brought which Representative Kasper agreed with for part of his amendment. What follows after the word section is what he added.

Rep. L. Klemin: What I added was consistent with the federal regulations.

A Voice Vote Was Taken: Motion carries

Rep. G. Paur: Originally the amendment was supposed to be inserted on page one after line 12. I don't know if that is still the case or not.

Chairman Koppelman: Yea, probably wouldn't fit on that line.

Representative Paur: With the additional language there it probably should have been after policies- line 14.

Representative Klemin: What are you inserting?

Chairman Koppelman: There was another amendment handed out (attachment 4) by Representative Paur and it was the sense of the committee at the time that the one line out of his amendment, which is half way down, on page 1 line 12 (before the disciplinary proceeding is scheduled the institution shall inform the student in writing of his rights under this section). If the intent is to accomplish that and it is related to section 1 of the bill, I think we should make a new subsection at the foot of section 1 and then it would apply to everything stated.

Representative Klemin: With respect to that part of this proposed amendment, I think it should be rephrased to reflect that these rights are for the accused and the accuser.

Chairman Koppelman: Because it says these students, I think it would apply, wouldn't it?

Representative Larson: If you look on the Christmas Tree version on page 3, line 8-10, when it says 'provide simultaneous notification' maybe that is where we could put in writing and that would accomplish what we are trying to do?

Chairman Koppelman: They are referring to rights and then you would be...I think it is better as a standalone. It blends with what you're talking about, but if it is a separate subsection it stands out as 'now that you have seen all these rights, you have to tell people these rights before scheduling a hearing'. For Representative Klemin's point about both students is viable although we say that in the 8, 9, 10 language that Representative Larson mentioned.

Representative Klemin: If that language goes into subsection one, where Representative Paur was suggesting that it go, it is followed by the language 'this right applies to both the student as been accused and accuser. This right would include right to receive the notice. I think Representative Paur's amendment needs to be rephrased a little. Maybe after the new language, at the end of subsection 1 instead- change the word to students.

Chairman Koppelman: and then the plural would have to be s' verses 's.

Representative Paur: I agree and move those amendments.

Representative Johnson: Second

A Voice Vote Was Taken: Motion carries

Representative Johnson: (attachment 5) Page 2 line 29 after the word 'in' include 'the reversal of the finding or'. We are not removing anything.

Chairman Koppelman: Would a reversal be included in a lessoning?

Representative Johnson: They are two different things. Page 3 line 3 after advice, add the following 'nothing in this section shall be interpreted as requiring an institution to use formal rules of evidence in campus disciplinary hearings. Institutions, however, must make good faith efforts to include relevant evidence and exclude evidence which is neither relevant or probative.' My concern there is that fully participates includes cross examination and as we all know you can't dig out the victims past, and that is my intent to protect. You don't use the rule of evidence but you're limited in this regard.

Chairman Koppelman: Let's take this piece by piece.

Representative Johnson: I move the first amendments.

Representative Maragos: Second

Representative Klemin: I wonder about the word finding because the previous stuff talks about the word decision. Instead of finding, decision?

Representative Johnson: May I amend my amendment to match that?

Chairman Koppelman: Yes, does the seconder agree?

Representative Maragos: Yes

Representative Klemin: Are we only talking about the first piece?

Chairman Koppelman: Yes

A Voice Vote Was Taken: Motion carries

Representative Johnson: My second amendment is as follows-- Page 3 line 3 after advice, add the following 'nothing in this section shall be interpreted as requiring an institution to use formal rules of evidence in campus disciplinary hearings. Institutions, however, must make good faith efforts to include relevant evidence and exclude evidence which is neither relevant or probative.' I move that amendment.

Representative Maragos: Second

Representative Klemin: Instead of saying 'shall be interpreted as requiring' should we say 'requires'. Nothing we say in this section requires an institution.

Representative Johnson: I'll accept that.

Representative Maragos: Me too.

Representative Kretschmar: Who in the institution or the student is going to determine what is relevant or not?

Representative Klemin: As I read the federal regulations on these proceedings, it must be conducted by officials who at a minimum receive annual training on the issues related to sexual assault ect, and on how to conduct on investigation and hearing process that protects the safety of victims and promotes accountability. They have to have the person who is presiding at this disciplinary proceeding has to be trained on how to do. That would be there person to decide.

Representative Wallman: Which I think leads to section 2, which is the study to make sure the training is taking place and that everyone who is conducting these hearings in capable.

Chairman Koppelman: The intent to your amendment is to ensure there is no misunderstanding that we are creating a judicial proceeding here and that the rules of evidence apply.

Representative Johnson: Correct

A Voice Vote Was Taken: Motion carries

Representative Johnson: I move a do pass as amended with rereferral to appropriations.

Representative Larson: Second

Representative Wallman: I had serious concerns about this but I talked about this with an ACLU lobbyist and my mind has been changed.

Chairman Koppelman: I believe Representative Klemin has taken care of some of your concerns.

Representative Johnson: I feel, Representative Wallman's pain in the unequal concern she did have and I think part of the study in the future should be whether the university should provide council to these victims and accused, however, the next question in my mind would be, now the university provided incompetent council. I hope the look at counseling in the study.

Chairman Koppelman: There was a comment earlier and I didn't propose this as an amendment but it is something that came up on this issue. Going forward that is something that we should discuss in the future. There is a lot involved and a lot to consider as we go forward in the future. I think what we have done is good for this perplexing issue.

Representative Klemin: I think it was Mr.Wilson said while they are waiting to see what the criminal assistance is going to do that they can issue no contact orders and other restrictions while they wait for things to happen.

Chairman Koppelman: These are all things they will be looking into.

A Roll Call Vote Was Taken: Yes 12, No 0, Absent 1 (Maragos)

Motion carries

Representative Klemin will carry the bill

Prepared by the Legislative Council staff for
Senator Casper
March 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 2, line 1, after "3." insert "This section does not preclude an institution from affording an immediate appeal process of the initial decision to an institutional administrator or body that did not make the initial decision, on grounds specified by the institution.

4."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 6, after "proceeding" insert "for a period of one year after receiving final notice of the institution's decision"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 18, replace "4." with "5."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in a lessening of the sanction,"

Page 2, after line 22, insert:

"6. This section does not affect the obligation of an institution to provide equivalent rights to a student who is the complainant or victim in the disciplinary proceeding under this section."

Renumber accordingly

Prepared by the Legislative Council staff for
Representative Klemin
March 30, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 3, after "education" insert "; to provide for the development of a uniform policy; and to provide for a report to the legislative management"

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 12, after the underscored period insert "This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim."

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 1, line 23, after the underscored period insert "This right applies to both the student organization that has been accused of the alleged violation and to the the accuser or victim."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 5, after "institution's" insert "initial"

Page 2, line 5, remove "the same institutional body that conducted the original"

Page 2, line 6, replace "proceeding" with "an institutional administrator or body that did not make the initial decision for a period of one year 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 accuser or victim"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in a lessening of the sanction,"

Page 2, after line 22, insert:

"5. 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.

6. 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 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.

SECTION 2. STATE BOARD OF HIGHER EDUCATION TO DEVELOP POLICY - REPORT TO LEGISLATIVE MANAGEMENT. The state board of higher education shall develop and implement a procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the state board of higher education. Before July 1, 2016, the state board of higher education shall report to the legislative management on the status of the implementation of the uniform procedure."

Renumber accordingly

Proposed Amendments to SB 2150

Page 1, line 10, after "advocate" insert a period

Page 1, line 10, remove ", who may fully participate"

Page 1, remove lines 11 through 12

Page 1, after line 12, insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding. Before the disciplinary proceeding is scheduled, the institution shall inform the student in writing of the student's rights under this section."

Page 1, line 19, after "advocate" insert a period.

Page 1, line 19, remove ", who may fully participate during any disciplinary procedure or"

Page 1, remove line 20

Page 1, remove "violation."

Page 1, after "violation." insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding."

Representative Johnson's Amendment to SB 2150

Page 2, line 29, after "in" insert "the reversal of the decision or"

Page 3, line 3, after the period insert "Nothing in this section requires an institution to use formal rules of evidence in campus disciplinary hearings. Institutions, however, must make good faith efforts to include relevant evidence and exclude evidence which is neither relevant nor probative."

15.0596.03005
Title.04000

Adopted by the Judiciary Committee

3/30/15
1/8

March 30, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 3, after "education" insert "; to provide for the development of a uniform policy; and to provide for a report to the legislative management"

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 12, after the underscored period insert "This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim."

Page 1, line 15, after the underscored period insert "Before the disciplinary proceeding is scheduled, the institution shall inform the students in writing of the students' rights under this section."

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 1, line 23, after the first underscored period insert "This right applies to both the student organization that has been accused of the alleged violation and to the accuser or victim."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 5, after "institution's" insert "initial"

Page 2, line 5, remove "the same institutional body that conducted the original"

Page 2, line 6, replace "proceeding" with "an institutional administrator or body that did not make the initial decision for a period of one year 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 accuser or victim"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in the reversal of the decision or a lessening of the sanction,"

Page 2, after line 22, insert:

"5. 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 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 or probative.

6. 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 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.

SECTION 2. STATE BOARD OF HIGHER EDUCATION TO DEVELOP POLICY - REPORT TO LEGISLATIVE MANAGEMENT. The state board of higher education shall develop and implement a procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the state board of higher education. Before July 1, 2016, the state board of higher education shall report to the legislative management on the status of the implementation of the uniform procedure."

Renumber accordingly

Date: 3-25-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2150

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0596.03001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Larson Seconded By Rep. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Voice Vote carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-30-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2050

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0596.03003

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Klemin Seconded By Rep. Johnson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

Date: 3-30-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2150

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Paur amendments

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Paur Seconded By Rep. Johnson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

VOICE VOTE CARRIED

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amdt: Sub 1, Section 1

Date: 3-30-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2356

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 1st Johnson amendments

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Johnson Seconded By Rep Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Pg 2, line 24
Pg 3, line 3 – after address. include if the appeal involves

Date: 3-30-15
Roll Call Vote #: 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2150

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 2nd Johnson amendments

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Johnson Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Nothing in this section limits Women must make

Date: 3-30-15
Roll Call Vote #: 5

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2150

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0596.03005

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☑ As Amended ☑ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Johnson Seconded By Rep Larson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2150 was placed on the Sixth order on the calendar.

Page 1, line 3, after "education" insert "; to provide for the development of a uniform policy; and to provide for a report to the legislative management"

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 12, after the underscored period insert "This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim."

Page 1, line 15, after the underscored period insert "Before the disciplinary proceeding is scheduled, the institution shall inform the students in writing of the students' rights under this section."

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 1, line 23, after the first underscored period insert "This right applies to both the student organization that has been accused of the alleged violation and to the accuser or victim."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 5, after "institution's" insert "initial"

Page 2, line 5, remove "the same institutional body that conducted the original"

Page 2, line 6, replace "proceeding" with "an institutional administrator or body that did not make the initial decision for a period of one year 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 accuser or victim"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in the reversal of the decision or a lessening of the sanction,"

Page 2, after line 22, insert:

"5. 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 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 or probative.

6. 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 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.

SECTION 2. STATE BOARD OF HIGHER EDUCATION TO DEVELOP POLICY - REPORT TO LEGISLATIVE MANAGEMENT. The state board of higher education shall develop and implement a procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the state board of higher education. Before July 1, 2016, the state board of higher education shall report to the legislative management on the status of the implementation of the uniform procedure."

Renumber accordingly

2015 HOUSE APPROPRIATIONS

SB 2150

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2150
4/2/2015
Job #25789

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Pa Mae Kneeh

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education; to provide for the development of a uniform policy; and to provide for a report to the legislative management.

Minutes:

Chairman Jeff Delzer: Opened the meeting.

Representative Kim Koppelman: This bill deals with due process for college students. It comes from a case at UND-Grand Forks. A young man was accused of sexual assault on campus. There was a disciplinary proceeding that went forward. He was indefinitely suspended. It was later found that he was falsely accused. The accuser was charged with filing a false police report. She has now left the state. The young man's reputation was destroyed.

This bill says that when you are in a disciplinary proceeding on a college campus, you should have the right to legal representation. Now there is a patchwork of policies at different institutions. Some say you can have an advisor or attorney there, but they can't speak. The accused has no defense.

When our committee received the fiscal note it had been reduced significantly. It was still about $880,000. I went to bat for that because I thought the fiscal note was ridiculous because it called for the employment of an administrative law judge.

Chairman Jeff Delzer: Do you have .04000 for fiscal note?

Representative Koppelman: Yes. We have a revised fiscal note.
We are asking for a university system-wide standard and policy so that it is not a patchwork.

Representative Bellew: Wouldn't the university due process take care of this?

Representative Koppelman: Yes. The problem is that by federal rule and normal jurisprudence we have to give the same rights to the victim as to the accused. The university system is assuming they have to hire an attorney to be present at a lot of these hearings to represent the side of the victim. This would not pay for the attorney for the accused?

Chairman Jeff Delzer: The fiscal note says that they don't know that they may have to hire a lawyer.

Representative Koppelman: When we have a fiscal note, whether or not the FTE is filled, the money is soaked up somewhere.

Chairman Jeff Delzer: The fiscal note doesn't put any money in the budget. It is just what they say is supposed to cost.

Representative Hogan: Did you talk about indigent defense? Those are a network around the state.

Represetative Koppelman: Not in this context. This isn't a court proceeding. They may not be entitled to that kind of defense at this stage. If they were charged and indigent, they would be.

Representative Hogan: If we could do some private contract with that organization?

Chairman Jeff Delzer: I don't think they would fit if they are paying for college. The bill actually says it is at their cost.

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2150
4/7/2015
Job #25893

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Kenneth M. Tabor

Explanation or reason for introduction of bill/resolution:
A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education; to provide for the development of a uniform policy; and to provide for a report to the legislative management.

Minutes:

Chairman Jeff Delzer opened the hearing on SB 2150. (Recording may have started late.) This is an issue where it's a disciplinary expulsion from college. I know there's a fiscal note on it. I talked to the sponsor of the bill. He seemed to question the fiscal note; Higher Ed is over in the Senate. I think the bill is probably a pretty good bill. I can't understand how you could be expected to have a lawyer that you couldn't even talk to. You certainly couldn't say anything when this incident; especially with today's modern technology, and how quick stuff can spread. I think it's probably a pretty good bill. What are your wishes?

Rep. Streyle: I move a Do Pass.

Rep. Skarphol: I second.

Chairman Jeff Delzer: SB 2150 is a bill that deals with having the legal right to have an attorney with you and help you with any college action, if they want to expel you for something you've been accused of, but not necessarily been through the court system yet. Discussion by the committee? Hearing none, the clerk will call the roll for a Do Pass.

ROLL CALL VOTE WAS TAKEN: YES: 21 NO: 0 ABSENT: 2.

Motion for Do Pass carries: 21-0-2.

Representative Klemin is the carrier.

Chairman Jeff Delzer closed the hearing on SB 2150.

Date: 4/7/15

Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150

House: **Appropriations Committee**

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By: Streyle Seconded By: Skarphol

Representatives	Yes	No	Absent
Chairman Jeff Delzer	✓		
Vice Chairman Keith Kempenich	✓		
Representative Bellew			—
Representative Brandenburg	✓		
Representative Boehning	✓		
Representative Dosch	✓		
Representative Kreidt	✓		
Representative Martinson	✓		
Representative Monson	✓		
Representative Nelson	✓		
Representative Pollert	✓		
Representative Sanford	✓		
Representative Schmidt	✓		
Representative Silbernagel	✓		
Representative Skarphol	✓		
Representative Streyle	✓		
Representative Thoreson	✓		
Representative Vigesaa	✓		
Representative Boe			—
Representative Glassheim	✓		
Representative Guggisberg	✓		
Representative Hogan	✓		
Representative Holman	✓		
TOTALS	21	0	2

Floor Assignment: Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed and amended: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (21 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2150, as amended, was placed on the Fourteenth order on the calendar.

2015 CONFERENCE COMMITTEE

SB 2150

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
4/13/2015
26063

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature Mencose

Minutes:

Sen. Luick: Called the committee to order. All members present. We're looking at the changes that happened in the House. Please explain the amendments.

Rep. K. Koppelman: The House essentially ensured that there is equal representation on both sides for the alleged victim (accuser) and the accused. That is in keeping with federal rule and we thought that was important. The next issue we clarified the terminology because some of this could be in the eye of the beholder. We had some testimony that indicated that words that we thought we all understood maybe weren't understand the same way by everyone, so we clarified that. The last issue we looked at was including the provision to ensure that there is a uniform policy in our University System because now it really varies from campus to campus. We think it is important that students in ND enjoy the same protection no matter where they go to school.

Sen. Hogue: You referenced a federal rule. What was that rule.

Rep. K. Koppelman: The federal register and this was referred to from the Dept. of Education and this is volume 79, referenced in #2-02 referenced 10/20/2014. It is 34 CFR part 6-68, the violence against women act, the final rule and there are issues in there that are pretty important relative to what we are doing here in this bill. First, the idea was to provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. I think the way that the bill was originally written, it sort of did that for the accused and we don't disagree with that, but some on our committee, and

some of the testimony we heard indicated that there probably had to be equal treatment there. It goes on to say that it should not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding. However, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties. That's where we got into the definition portion because when we had an attorney who represents NDSU and also the State College of Science, his reading of the term "fully participate" which was in the bill was very different. He basically said when I read "fully participate" it means pretty much what we're doing right now. We said that we didn't want a legal representative that's a potted plant. We want someone to actually represent and take part. This research was done by Rep. Rep. Klemin and he could have been one of the conferees.

Sen. Hogue: I don't know if it goes back to a House amendment or not. One of my concerns on the Senate side is making sure that we are having these hearings only for the most serious matters and the bill I think purports to limit it to offenses that could result in suspension or expulsion of the student. I haven't read these handbooks but I guess after your 3 or 4th party you could be subject to suspension or expulsion. If you're continually having a 6 pack of beer in your dorm room or your music too loud, or you have too many people in your room, maybe they are staying too late. I am still troubled by this bill in the sense that I don't think it's tight enough. Who is a victim if your stereo is too loud down the hall; everyone in the hallway. Do they have an opportunity to come and cross examine. What if you're having a large party, I would think that the garden variety complaints that they have to deal with should be off the table for this due process. I'm not sure that we've taken them off the table because to say that you only get to invoke these rights for suspension or expulsion is a pretty broad category I would think. Did the House know of a way to tighten this bill; I want to afford due process for criminal offenses. I agree with that, but all we've taken off the table in this bill is the academic dishonesty and not the minor misconduct that arises in university campus life all the time.

Rep. K. Koppelman: While I appreciate Sen. Hogue's comments, I think the intent of the committee was to try and limit it. I think we would be open to hearing any language that might accomplish what you've described, but I think the key was that we were aiming at the same kinds of serious allegations that you articulated and clearly academic misconduct or some of the lesser issues probably don't rise to that level, and we felt that by talking about suspension or

expulsion that we were getting at some of those. I think it was clear in the testimony we heard, that the key to our deliberations and our understanding of how we packaged the bill, is that this probably would not be invoked in every circumstance. They might have the right to do that, but are you going to go out and hire an attorney at your own expense to defend a disciplinary action for having your stereo too loud in the dorm; probably not. There might not be any criminal wrongdoing in the end, but somebody's been accused of something that rises to that level, and the mere accusation and publicity and potential suspension or expulsion, whatever results. That can really seriously alter, ruin someone's life. In those cases, we think that they need some defense; due process rights.

Rep. Delmore: One of the things that we were presented with in committee was the paperwork that was presented to a student who was in this situation. As the mother of a child that went through the university system, if my child was given that, I would certainly want to have a lawyer involved. This is serious. These are 18, 19, 20 year olds that having been through the life process that many of us have. I think most of us, if we're summoned to a court appeal, we're a little shaken ourselves. This is for the student, their life on the line, you could be suspended or expelled, whether you're a freshman or a junior, you put a lot of time and effort into being there and to accomplishing your dream, etc. Just looking at what was given to them for a young student, I really felt that was overwhelming. The House felt the same way.

Sen. Nelson: I'm reading lines 15-17, slightly different than our chairman is. I'm on page 1, version 4000. It says, "This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion". This doesn't have anything to do with academics. This other line is the one that I think is important. This is something major. This is not the beer in the dorm or the gun in the trunk of the car. They have other things to handle, but they are not the suspension or the expulsion. I think they tighten this bill up and I did read Rep. Klemin's missive that he sent out on email and I thought it was very interesting and I think you did a job of it.

Sen. Hogue: I had another question for the House. We did have some testimony on a couple of incidences that involved students. I know that the bill was talked about as a student's due process rights, but we on the Senate side had no testimony about organizations and affording them due process. I'm wondering if there was any discussion on the House side or how the bill came to include organizations within a due process rights bill for students.

Rep. Johnson: I can only imagine that the student organization's rights portion of it is in response to the Duke Lacrosse issue. That was pretty well publicized where those four members of the Duke Lacrosse team were falsely accused of sexual imposition and I believe that's why they include organizations.

Sen. Nelson: That was part of the original bill. The original bill had included organizations.

Sen. Hogue: I realize that it was part of the original bill, but going to the Duke Lacrosse issue, was the lacrosse team itself subject to some action. I'm just not clear on how the student organization is part of this bill.

Rep. Johnson: I don't know if the entire lacrosse team was sanctioned but I know those four members were and they were vilified in the press before they were exonerated as an entire team.

Rep. K. Koppelman: That was part of the original bill, I guess I don't see a great distinction other than organizations are not going to lose their liberty, like an individual might for a criminal charge, but beyond that, there probably isn't much difference if an organization is falsely accused and should be afforded to them as well. We did not receive a lot of testimony on that issue. I think it came up briefly but most of the focus was on the individual aspect.

Sen. Nelson: Very often with an organization, the national organization gets involved before the college even does; it might withdraw the charter or suspends a charter. It happened with a fraternity at NDSU, with a sorority at UND. It's something that happens, but usually the hierarchy of the organization gets very active when something like that happens.

Rep. K. Koppelman: I move that the Senate accede to the House amendments on SB 2150.

Sen. Nelson: Second the motion.

Sen. Hogue: I don't know if everyone got the email from Mr. Sagsveen and attachment had some comments from the Council for NDSU and I thought part of what he said is that we would be abridging the students' due process rights under federal law if we passed this version. He held the opinion that they had certain due process rights under federal law and that if we were to

pass this, we would be shortening the period of time and I don't recall the specific period of time.

Rep. K. Koppelman: I'm not sure that I can speak to a time period specifically, but I know that some things were mentioned by the attorney referenced in testimony. In fact, at the request of Mr. Sagsveen, we held the hearing open for a second day so that individual could come and his testimony ran about 2 hours and that's where some of the amendments came from. For example, the question of having a different definition for what "fully participate" means or "full participation". So we thought it should be spelled out. We did have some veiled general references to federal law and rule and Rep. Klemin is very detail-oriented attorney on our committee and he did great research into that subject; it concluded that what federal law said or did, or federal rule said or did was not really completely accurate about what it said or did. We feel comfortable that the amendments took those kinds of concerns that were expressed in the consideration and that we have them in plenty good shape.

Sen. Hogue: I am voting against the motion. I think this is a little bit of an overreaction to an isolated problem. I voted against it in the Senate and I'm going to vote against it in committee.

Sen. Luick: Motion failed because vote was 4 yes 2 no; there weren't two affirmative votes from the Senate committee. We will meet again; meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
4/14/2015
26090

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature D Kenoske

Minutes:

Sen. Luick: We will open the conference committee on SB 2150. All members present. At our last conf. comm. meeting the motion failed for the Senate to accede to the House amendments.

Rep. Johnson: I move that the Senate accede to the House amendments.

Rep. Koppelman: Second the motion.

Sen. Luick: Any discussion.

Sen. Hogue: I oppose the motion. I still have a problem with subsection 2 of section 1 involving these organizations. I still can't get past that we want to create a bill that creates due process rights to protect our students against potential collateral effects of these quasi-judicial hearings that can impact the students' lives and career, their vocation. Someone stuck in subsection 2. I realized that we passed it over to the House from the Senate, but I still am not convinced that there is any good policy reason to keep that in the bill. What I heard from the House yesterday was, well it involved the Duke Lacrosse team that happened 10 years ago, but actually that doesn't apply here. The duke Lacrosse team is part of Duke. It is not a student organization that's on campus that exists apart from Duke. That couldn't serve as a justification for this. I know, Rep. Koppelman, you said well it's kind of like a business; if we allow businesses to be represented by lawyers we should allow these organizations as well. Except as I thought about that and the analogy just doesn't carry for me. These organizations are not businesses; they aren't there to make money. They are not there to do anything except serve the interests of the students. When the university comes to the conclusion that this group/fraternity/sorority/organization is not serving an educational purpose

for the students. I don't know why we would treat them the same as we would students who have due process rights, who have reputations, whose careers would be affected. I still can't see how student organizations are the equivalent of students and why they should be given the same due process rights as students. I think it's a mistake and I would still ask the House, did you have any testimony at all in support of subsection 2 of section 1.

Rep. Koppelman: I think the testimony that we heard from Mr. Cohen, I think the student organizations being represented may have come up in some of what he brought to the committee. Why should organizations not be afforded due process rights? We don't ask that question of any other citizen, entity, or organization/individual in our society; demonstrate to us why you deserve due process. We give it. What's a good reason not to have it?

Sen. Hogue: I would submit that there are several reasons. We've had universities for over 100 years and we've managed to get along without lawyers for organizations. I don't know whether you believe the fiscal note that came from Higher Education on this bill. I don't think the numbers are correct. Every time you put more requirements on higher education institutions the Board, the staff, you are imposing additional administrative costs and I come from the school of thought that before we fix a problem, we should have sound evidence that the problem actually exists. I don't think that is a problem here. What we do have, is that someone drafted a bill to provide protection for students and somebody said "let's include the organizations" without any evidence that they are somehow being stripped of their rights on these campuses and being prejudiced, or having their reputation damaged. I think their organizations, for the most part, are part of their national organizations and they desire to have a presence on each of these campuses. They might have, for example, fraternities that own some physical property and they might invite people to join their group. Fundamentally I do back to the question of why are they there. It's not a business; they are there because the campus thinks that they can provide educational value. They're like a lot of associations and when they do that, they should be allowed on campus but I just don't see that they should have the same due process rights as students.

Sen. Luick: Just thinking about this, I wasn't part of an organization or fraternity, at what level is that organization identifiable and how small. If two people get together and say we have a "blue green organization here so we now have this identification on a campus". At what point is that group an organization that is covered under this policy.

Rep. Delmore: As I look back at all the drafts of the bill, that's been in the bill since you had it in the Senate. This wasn't something that we added. It was already there. We're also looking at institutions that should have the students' and the organizations', be their #1 priority. It's why our universities exist. We also have Supreme Court rulings that say that corporations are people. I don't understand why this particular section that's been in there since the beginning is causing the trouble that it is.

Sen. Nelson: You asked the question of what constitutes a student organization. Student organizations are recognized by student government. I think if you just threw out all of the fraternities and sororities and considered all the rest of these organizations, you are going to have hundreds of other organizations. They get a piece of the pie of the student government. They apply with a budget. The NDSU Hockey Club or the Chess club, or the Honor Society Phi Kappa Phi or there are a whole slew of clubs, we well as a bunch of international organizations. Then you read further down in here that says "we're only talking about the ones that have a violation that might result in a suspension or removal of the student organization from the institution. We're not talking about every one of those up to 300 organizations. It's a small number.

Rep. Koppelman: To Sen. Nelson's and Rep. Delmore's points, I think it's correct that we are debating issues that should have been debated with the bill sponsor when it was introduced in the Senate. All we did in subsection 2 was that we added the same language that we added everywhere else in terms of both the accused and the accuser having equal representation. That was the issue. As to the question of whether it's wise or not to have student organizations in there as Rep. Delmore said, they were in there in the beginning. We're not really discussing the amendments to the bill at this point. To that overall point, I also think that it is probably is wise. We live in a day and age when there are a lot of volatile issues on college campuses, not that that's a new phenomenon. I think all of us have seen that, became a hotbed for activity and discussion. If something is not particularly popular with the powers that be, could they be unjustly removed or disallow to exist as an organization, I think the chances are that they could. Or could they be disallowed from participating in a certain type of activity or speech or expression that may be viewed dimly by the school. If they are, should they have the right to representation so those constitutional rights are not trampled? I think it is appropriate. But again, that's not really part of the House amendment. We do have a motion on the floor.

Sen. Luick: We will take the vote on the question.

4 Yes 2 No 0 Absent

MOTION FAILED: TWO SENATORS VOTED NO FOR THE MOTION.

Sen. Luick: The motion failed. We will adjourn.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
4/15/2015
26124

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature D. Penrose

Minutes:

Sen. Luick: We will open the conference committee meeting to order. All members were present.

Sen. Hogue: I move that the House recede from their amendments and further amend the House version to delete subsection 2 of section 1.

Sen. Luick: Second the motion. Clerk will call the roll.

2 YES 4 NO 0 ABSENT MOTION FAILED

Rep. Koppelman: We have spent a lot of time talking about the Bill and not the amendments. I wanted to reiterate what the House amendments to the bill did. I think there were three basic issues. 1) it ensured that both the accuser and the accused are treated equally, which we thought was important; 2) it defined what fully participate means, because there are some disagreements about that; 3) required that the State Board of Higher Education develop a procedure that was uniform among all the campuses. I really think those are good amendments and it is the purpose of the committee to debate what the amendments are and try to find some meeting of the minds there. I move that the Senate accede to House amendments.

Rep. Johnson: Second the motion.

Sen. Luick: I had a question that came up in discussions with the committee whether it is a concern of uniformity between campuses of different sizes and different locations, different personnel. Is that something that is of concern to you?

Rep. Koppelman: I really don't have that concern simply because I think we are dealing with due process rights which should be a right of every student, every organization, if you grant that premise and I know there is disagreement on that. Whether you're at a small school or a big school there might be differences in procedure or how the policy is carried out, but to have a basic policy that guarantees certain rights. I think this can be system-wide and we think should be.

Sen. Hogue: I speak against the motion. I think we have probably addressed it before, but I think the amendments really take this due process even further than what we have in our criminal courts. We don't have victims represented by counsel questioning a defendant, or the accused, and we leave that up to the prosecutor. I just think this is really going too far afield for the problem that we are actually trying to address.

Rep. Johnson: I support the motion. I believe that because the Dept. of Education, specifically the Office of Civil Rights in 2011, watered down severely, the measure by which these things these matters are judged, meaning that a preponderance of the evidence when you have a watering down of procedural processes you need to up your game in due process area. They did that with their Dear Colleague letter that's referenced often. I don't think this goes above and beyond the criminal courts. My amendment specifically said that you are not required to use the Rules of Evidence. In a criminal court you get to use the rules of evidence. There is no more due process granted students in this procedure than there are in criminal courts.

Rep. Koppelman: Just to respond to Sen. Hogue's comments, I don't necessarily disagree from a common sense perspective that in some of these proceedings you have a situation where the institution is accusing a student of something and the main impetus of the bill was to make sure that the accused student had some rights, due process, and legal counsel. But as we heard testimony on this and we heard a lot of people speaking for so-called victim's rights and pointing out that the institutions' interests may differ from the accuser at times; maybe the same, maybe not. I don't necessarily always agree with every federal rule in the world says, but this one, governing the education world says, "that the institutions must provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. They really stressed in not only there, but in other places that both the accused and accuser need to have this counsel; whether we think it is the

fairest or best idea, it is kind of the way of the world in higher education right now and that's why we put it in the bill.

Sen. Hogue: I know I'm going back to policy in the original bill. I think the bill, I see that it is on the tracks and going down the tracks, but I think it is bad policy. If we have a serious event we have prosecutors in all these towns; Grand Forks, Fargo, etc. and their job is to investigate crime and prosecute crime. In our system of higher education should not be in the business of holding these mini-courts. They should have the authority to take the necessary disciplinary action against students that are either convicted or, in their mind, charged with misconduct. When you start creating a court like system on our university campuses, I don't think it is the mission of the university system to do that. I was hoping that as this bill went through that we would tightly define when it is that these processes can be implemented, where we are going to have due process hearing, but we haven't done that. We've just said that if you can be suspended or expelled, which you can be suspended or expelled for, the simplest offenses, if they are of sufficient frequency and this is not a place for lawyers and tribunals and law suits. I've read the federal register; the federal register, as the House knows, is not law. It is public comment. I think this bill has gotten way off track; it's been tacked on with amendments that have made it uglier. Maybe we should just think about killing it.

Rep. Johnson: I call the question.

4 YES 2 NO 0 ABSENT

MOTION FAILED DUE TO LACK OF TWO SENATORS VOTING IN FAVOR

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2150
4/16/2015
26159

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature DRenner

Minutes:

Sen. Luick: Called SB 2150 to order. All members present.

Rep. M. Johnson: I move that the Senate accede to House amendments.

Rep. K. Koppelman: Second the motion.

5 YES 1 NO 0 ABSENT

SENATE ACCEDE TO HOUSE AMENDMENTS

CARRIER: Sen. Luick **CARRIER: Rep. Koppelman**

Date: 4/13/15
Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150 as (re) engrossed

Senate Judiciary Committee

Action Taken
- ☑ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. K. Koppelman Seconded by: Sen. Nelson

Senators	4/13			Yes	No	Representatives	4/13			Yes	No
Sens. Luick	✓				✓	Reps. K Koppelman	✓			✓	
Hogue	✓				✓	M Johnson	✓			✓	
Nelson	✓			✓		Delmore	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

Motion Failed

Date: 4/14/15
Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150 as (re) engrossed

Senate Judiciary Committee

Action Taken
- ☑ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. M. Johnson Seconded by: Rep. K. Koppelman

Senators	4/14			Yes	No	Representatives	4/14			Yes	No
Sens. Luick	✓				✓	Reps. K. Koppelman	✓			✓	
Hogue	✓				✓	M. Johnson	✓			✓	
Nelson	✓			✓		Delmore	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

Motion failed

Date: 4/15/15
Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150 as (re) engrossed

Senate Judiciary Committee

Action Taken

- ☐ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☑ **HOUSE recede from House amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Hogue Seconded by: Sen. Luick

Senators	4/15			Yes	No	Representatives	4/15			Yes	No
Sens. Luick	✓			✓		Rep. Koppelman	–				✓
Hogue	✓			✓		M. Johnson	–				✓
Nelson	✓				✓	Delmore	✓				✓
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 2 No: 4 Absent: 9

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

Motion failed

Date: 4/15/15
Roll Call Vote #: 2

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150 as (re) engrossed

Senate Judiciary Committee

Action Taken
- ☑ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Rep. M. Johnson

Senators	4/15			Yes	No	Representatives	4/15			Yes	No
Sen. Luick	✓				✓	Reps. Koppelman	✓			✓	
Hogue	✓				✓	M. Johnson	✓			✓	
Nelson	✓			✓		Delmore	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

Motion Failed

Date: 4/16/15
Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2150 as (re) engrossed

Senate Judiciary Committee

Action Taken

- ☑ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Johnson Seconded by: Rep. Koppelman

Senators	4/16			Yes	No	Representatives	4/16			Yes	No
Sens. Luick	✓			✓		Reps. K Koppelman	✓			✓	
Hogue	–				✓	M. Johnson	✓			✓	
Nelson	✓			✓		Delmore	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 5 No: 1 Absent: Ø

Senate Carrier Sen. Luick House Carrier Rep. Koppelman

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

REPORT OF CONFERENCE COMMITTEE

SB 2150, as engrossed: Your conference committee (Sens. Luick, Hogue, Nelson and Reps. K. Koppelman, M. Johnson, Delmore) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1235-1236 and place SB 2150 on the Seventh order.

Engrossed SB 2150 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2150

SB 2150 Due Process for students

Chief Justice Gerald VandeWalle, State of the Judiciary presentation, January 7, 2015

Most of us learned, or should have learned in school, that in 1215 at Runnymede near Windsor Castle, King John of England sat under a tree and signed the Magna Carta, the Great Charter. That document is the foundation of Constitutional rights and liberties and is the foundation of law that the entire court system of the United States relies on even today.

Among the principles laid out in the document is the concept of due process. Due process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including the right to fair hearing before a fair and impartial court with the power to decide the case. It encompasses the principle that the state must respect all of the legal rights that are owed to a person. It is a constitutional guarantee that all legal proceedings will be fair and that the application of laws will not be unreasonable, arbitrary or capricious.

Sherry Warner Seefeld

Testimony on SB 2150 January 26, 2015

Good Morning Chairman Hogue and members of the Senate Judiciary Committee

Thank you for this opportunity to speak with you.

Sexual assault is a horrific crime and we all must make every effort possible to prevent such assaults from happening. I am happy to see implementation of much needed education and programming aimed at prevention and intervention. All of us can strive to do a much better job of supporting, discussing and promoting such activities, not just on campus but throughout every facet of society.

However, in our zeal to make campus a safe place for all students there is a disturbing trend which has, in fact, made colleges and universities decidedly unsafe for a group of students who are currently denied basic civil rights, those accused of sexual assault. As Americans, we have constitutionally guaranteed protections from an overzealous government – an assumption of innocence until proven guilty, the right to counsel, the right to not self-incriminate, the right to present witnesses and evidence, the right to cross-examine, the right to appeal, and freedom from double-jeopardy to name a few. Most of these rights currently do not exist on college campuses for those accused of serious crimes.

You do not have to believe there are large numbers of false accusations to insist that the process used to determine guilt or innocence be fair. After all, stigma of the very accusation of sexual assault remains with a person the rest of their life.

I think we can safely say, all of us want to protect our young people from sexual assault, however, students on today's campuses are facing a

rape hysteria similar to that of McCarthyism. Whipped up by oft repeated statistics based on unreliable and completely debunked research, some of it unfortunately coming from North Dakota, administrators, faculty and students are quick to rush to judgment on sexual assault accusations. Little of this research data is supported by Bureau of Justice and FBI statistics on rates of rape and other types of sexual assault in the US.

Colleges and universities are facing enormous pressure from federal and state governments as well as from alumni, to be tough on sexual assault, resulting in thousands of students being found guilty more on mere accusations rather than on evidence.

It is in this atmosphere both claimants and respondents must traverse the university disciplinary hearing process. Both deserve to have counsel by their side to help them navigate a very complex system which has potential implications for criminal justice proceedings and for their entire futures.

I would like to share with you a little about my son Caleb's experience which may illustrate the importance of SB2150.

First, it is important to understand that all documents and recordings collected during the university investigation and hearing can be used against someone in a potential future criminal justice proceeding.

When Caleb was called to Dean Jeffrey Powel's office on January 27, 2010, he was asked to provide an oral and written account of his relationship with the complainant. Dean Powell engaged in an investigatory questioning of Caleb while keeping his own personal notes. At no time was Caleb told that he could have an attorney with him nor that everything he said could be used to prosecute him in a court of law. In fact, it was quite the opposite. Dean Powell assured Caleb that the University looked at him equally to the complainant as student of UND and deserving of their

protection. Dean Powel also assured Caleb that a thorough investigation would be conducted in order to get to the truth. Caleb, who knew there was more than ample evidence and witnesses who could substantiate his own story and negate all aspects of the complainant's story, left the Dean's office "knowing" everything would be straightened out. In fact, that evening when he called to tell me this meeting had happened he reassured me he did not need an attorney when I asked if we should look for some advice. He truly believed in his university, that there was some mistake and everything would be straightened out. Truth always wins, right?

What he and I did not understand at that time was that Dean Powell was both the investigator and the prosecutor and apparently was not sufficiently motivated to conduct a thorough investigation.

Luckily, my gut told me we needed an attorney to protect Caleb's rights and I hired Steven Light who, from that point forward, communicated with UND on Caleb's behalf.

Three days later, after the supposed thorough investigation, Caleb was notified there would be a disciplinary hearing on February 11 and he was assigned a university advisor to help him understand the hearing process. Caleb was told he could have his attorney present but that attorney could not speak or in any way participate in the hearing. If it was determined that Caleb's attorney was violating this stipulation he would be removed from the room.

Imagine that – A 23-year old must defend himself against an accusation which in the criminal justice system is a felony and has mandatory prison time attached, with only 11 days of preparation, in an audio recorded hearing where anything he said could be used against him in a criminal court.

Let's fast forward to the hearing. The following people were in the room

Caleb, Mr. Light, his attorney and the assigned university **advisor**.

A hearing panel composed of 3 students and 3 faculty members

Four witnesses for Caleb who appeared one-by-one. The complainant did not present any witnesses nor any additional evidence.

Director of the Woman's Center – who sat next to the complainant holding her hand, hugging and patting her throughout the hearing, thus non-verbally providing a strong message to those in the room.

Dean Jeffrey Powell – investigator and now prosecutor, with years of experience in this role in hearings.

Julie Ann Evans – General Counsel of UND – who not only participated in the hearing in an adversarial way, but also badgered all of his witnesses. Additionally she controlled the narration of the proceedings by making statements or expressing her opinions. One example of this is when she asked each witness if he was a fraternity brother and then proclaiming to all in the room "We all know fraternity brothers lie for each other" thus dismissing their testimony.

She also actively badgered non-law trained Caleb by vociferously objecting to his questions such as his query "Do you know what 911 is for?" which he asked the complainant. This seems like a logical question to ask someone who voluntarily admitted in her statement she had access and used her phone during the entire evening of the alleged assault.

Complainant had a choice of whether to answer questions.

The rest of the story is probably well known to many of you. By a Preponderance of Evidence Standard, (not federally mandated at that time) the hearing panel found it was at least 50.01% more likely Jessica's story was true than Caleb's and he was immediately expelled. His academic career was over.

He had only five days to ask for an appeal after which no appeal would be granted.

In order to prepare for a potential court case Mr. Light requested a copy of either the audio recording or a redacted transcript. This request was denied. To this date neither has ever been provided.

Three months later, after a police investigation concluded, the Grand Forks district attorney issued a warrant for the complainant's arrest for filing a false police report.

Yet, it took an additional year and a half of efforts by attorneys, alumni, a civil rights organization, media, and myself before UND would vacate the sanctions because, as Ms. Evans insisted, "there really wasn't any new evidence" even though the detective had actually completed a thorough investigation and interviewed several more witnesses, including the complainant's boyfriend and other friends (hers and his) who actually supported Caleb's story.

Punishing innocent people is traumatically destructive and is poor policy which does damage also to true victims. Our entire society has a vested interest in creating fair and just processes for determining guilt or innocence on such important accusations. It is a slippery slope when a society deems it okay to fall back into feudal-like justice systems where select groups of people have the power to accuse and convict any who they name.

Please don't let cost be a reason to throw away lives. My son's life and the lives of all our students are worth the effort to get it right.

I strongly urge you to pass SB2150. Constitutional rights should not disappear on our college campuses. Protection of those rights through access to counsel should be guaranteed to all.

SB 2150
1/26/15

3-1
1/26/15
SB 2150

Grand Forks Herald EDITORIAL
January 14, 2015

OUR OPINION: Accused students need due-process rights

By **Tom Dennis**

You're a college student accused of sexual assault, and your disciplinary hearing at a North Dakota University System campus is under way.

If you say nothing, that can be used against you. But if you speak up, that can be used against you, too - especially later. For if criminal charges result from the accusation, then everything you say at the hearing will be admissible in court.

What to do?

Start here: Get a lawyer. And thank a few key North Dakota lawmakers, assuming their proposal to give students in such situations the right to an attorney becomes law.

Over the past few years, campuses and American society have grown a lot more sensitive to people who claim to have been sexually assaulted. That's good, because some of the changes were long overdue. Too many victims of sexual assault told of dismissive investigators, rude questioning, extreme reluctance to go after star-athlete suspects and other deep procedural flaws.

But now, Lady Justice's scale has tipped too far; and on campus, it's the accused who too often are being mistreated. Under pressure from Washington, campuses have set up systems that can resemble kangaroo courts, complete with investigators doubling as judges and juries, minimal standards of finding guilt, no power to cross-examine witnesses and limited ability to appeal.

These procedures raise the odds of innocent students being found guilty and then expelled. That's an outcome that can ruin lives.

And that, in turn, is why the accused in such proceedings deserve due-process rights. These start with the rights to an attorney and to appeal, which Senate Bill 2150 provides.

The bill - whose sponsors include Sen. Ray Holmberg and Rep. Lois Delmore, both of Grand Forks - lets a student not only hire an attorney but also have that attorney fully participate in the proceedings, something he or she could not do today.

Also, the bill lets students facing the most serious punishments appeal to the district court. That, too, seems appropriate, given that the consequences of being wrongfully suspended or expelled could be so dire.

These changes aren't meant to return sexual-assault victims to the Dark Ages of indifference or contempt. Instead, they're meant to bring balance: to recognize that increased sensitivity to accusers' concerns also warrant heightened sensitivity to the rights of the accused.

And North Dakota lawmakers aren't alone in calling for this balance. In October, 28 members of the Harvard Law School faculty complained of their school's even more one-sided procedures in a letter to the Boston Globe.

"Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused and are in no way required by Title IX law or regulation," the letter states.

Harvard Law Professor Nancy Gertner is one of those 28 faculty members as well as a retired federal judge. In a recent column, she describes how she sees the issue:

"However flawed, the way we test narratives of misconduct - on whichever side - is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder," Gertner writes.

"While we know ... that even these 'tests' can produce wrongful convictions, they are at least more likely to produce reliable results than the opposite - a one-sided, administrative proceeding, with a single investigator, judge, jury and appeals court."

The Legislature should approve and the governor should sign Holmberg and Delmore's bill.

1/26/15 #4-1

Holmberg, Ray E.

From: Bruce Gjovig <bruce@innovators.net>
Sent: Sunday, January 25, 2015 2:09 PM
To: Casper, Jon; Hogue, David J.; Armstrong, Kelly; Luick, Larry E.; Nelson, Carolyn C.; Grabinger, John
Cc: Holmberg, Ray E.; Delmore, Lois M.; Johnson, Mary C.; Larson, Diane K.
Subject: FOR SB 2150 Due Process for College Students & Student Organizations

FOR SB 2150 Due Process for College Students & Student Organizations

TO: Members of Senate Judiciary

Unfortunately I am not able to be at the hearing on Monday. Please accept this testimony in support of SB 2150

1. **There is nothing worse in life than being falsely accused**... other than also being punished when innocent. That often happens ***when due process is denied*** such as on college campuses where attorneys are denied engagement in campus hearings. *Some power needs to be granted to the powerless* to stop innocent young people from being suspended, expelled, or falsely punished.

2. The North Dakota legislation is modeled after a **North Carolina law** approved in 2013, the first of its kind in the nation. **North Dakota would become the second state** to let students and student organizations engage an attorney when they are accused of non-academic infractions.

3. The legislation is too late for **Caleb Warner of Fargo**, whose wrongful treatment at the hands of the UND administrators is all too typical. Had it not been for a brave mother we would not know the ugly details of him being falsely accused of rape and expelled at a campus disciplinary proceeding despite the police declaring him innocent and putting out a warrant out for the arrest of his accuser for filing a false police report. It took nearly *2 years* to get the expulsion repealed following *repeated requests* for a rehearing plus lots of pressure from his mother, alumni, the Wall Street Journal and national organizations. His innocent life was ruined, and any Google search demonstrates the ongoing damage to his reputation. Who helps the other students who are falsely accused and punished?

4. I am advisor for several UND students and student groups, and **innocent students are punished every month**, under the guise of controlling students' behavior. There has been a severe loss of student advocates on campuses, and college administrators have become very punitive and controlling, often giving the illusion of due process, but it is *not due process.*

5. A hearing before an **impartial fact-finder and decision-maker is essential to due process**, but University disciplinary hearings are *not impartial.* The prosecutor and the judge are often the same person, or report to the same person, and appeals are made to the same decision makers, who see students as a threat to their control. Strange how they reject all appeals and think they never make a mistake. They often presume and claim a student is guilty as they did Caleb Warner, long after others know better. The administrator's primary loyalty - financially, personally and legally - is to the university *NOT the student.* That is why attorney's must be present, as too many administrators have bias, a conflict of interest, and have predetermined the outcome of the case – or their superiors have – *against the student.*

6. Remember the **Kangaroo court** at the **University of Virginia** after the Rolling Stone article in October. University administrators were quick to condemn and punish innocent members of a fraternity for months, which then were subject to mob rule because these false charges were everywhere in the media. Plus sanctions were placed on ALL fraternities for months i.e. punish lots more innocent

students – with still no apology, no admission of wrong doing, or making things right. This kangaroo court atmosphere is all too prevalent on campuses because of the lack of due process and legal oversight. Innocent students and innocent student organization are punished often, under the guise of controlling behavior. *But punishing innocent people is wrong – **always**.*

7. Like the North Carolina law, **appeal to a district court is essential** and legal counsel is needed because the college disciplinary hearing is usually the last reasonable time to influence bad decisions. An administrative appeal on campus is generally futile as the administrators defend their decisions, and courts have given deference to the university system. Until now, it has been almost impossible for an accused student to prevail on appeal on campus or in courts. The absence of meaningful review makes it critically important to allow students to go to District Court to prove their innocence – even if no citizen should NOT have to prove their innocence, but college students do.

8. **It is very important to include student organizations.** Many innocent student organizations are punished, esp. fraternities. The misdeeds of one or a few members of an organization do NOT justify disciplinary action against the entire association and all of its members – unless the organization sanctioned and approved of the action of those few. For such a collective punishment to be just, the group *in its totality* should have shared a criminal intent or conspired in the commission or cover-up of a crime. **The First Amendment's protection of *freedom of association*** must be honored, and done so vigorously. There should be **no guilt by association** without specific evidence that the offending members were acting in accord with the organization's practices and policies, with the formal wishes or knowledge of the members, or with the tacit approval of the organization's leadership. The First Amendment's guarantee of freedom of association would mean little if an entire group could be prosecuted, or even disbanded, because of the *unauthorized actions* of a few. Yet there are scores of cases at UND of innocent students being punished, and student groups being punished, because of the actions of a single person – with no prior knowledge of the organization or its many members. This must be stopped just as the outrageous sanctions at the University of Virginia.

9. **Higher Ed put a fiscal note of $2.5** million based on 1,000 hearings per semester (!) currently and assumption that some would opt to pursue legal representation and/or appeal. http://www.legis.nd.gov/assembly/64-2015/fiscal-notes/15-0596-02000-fn.pdf?20150124221812 Since the student pays his own attorney fees, and the campus only pays when students are found innocent after being falsely accused, this is a tacit admission it will be costly to correct their egregious campus disciplinary system. *Do not let campus take these funds out of student tuition and fees.*

10. **Punishing the innocent never works, not even the guilty**. College administrators punish in anger, in frustration and an attempt to control and dominate, and get instant relief from their improper actions. It makes the punisher feel good, but does little positive for the punished. ***Administrators do not want to do the hard work of positive modeling.*** And so, what has been learned? The punisher has learned next time they feel angry and frustrated that if they just punish they will feel better. The punished has learned something different - next time don't get caught, avoid the administrator at all costs, and they learn this is not a place they want to be –a hostile environment that is not about learning. Our state cannot afford to buy into negative punishment policies, negatively impacting our future talent.

Thank you for your support of SB 2150.

Bruce Gjovig
CEO & Entrepreneur Coach
UND Center for Innovation Foundation
Bruce@innovators.net
C: 701-739-3132

1/26/15

5-1
1/26/15

UND Student Senate

SB 1415-05

Senate Resolution

To: The Student Senate of the University of North Dakota

Authors: Matt Kopp – Greek Housing Senator

Sponsors: John Mitzel – Off-Campus Senator

CC: Tanner Franklin - Student Body President, Brett Johnson - Student Body Vice President, Cassie Gerhardt - Student Government Advisor, Andrew Frelich – Student Organization Funding Agency Advisor; Dr. Lori Reesor – Vice President for Student Affairs, Cara Halgren – Associate Vice President for Student Services & Dean of Students

Date: January 25th, 2014

Re: Support for North Dakota Senate Bill 2150

Whereas, one of the main goals of the University of North Dakota Student Government should be to protect the rights of students, and

Whereas, whenever it is appropriate to expand the rights that students possess on campus and within the broad scope of the legal system it should be the priority of this body to secure those rights, and

Whereas, Senate Bill 2150, brought forth by the 64th North Dakota Legislative Assembly, seeks to protect and expand the rights of students by affording them the right to council in administrative disciplinary hearings, and

Whereas, the right to representation is a critical component of any just disciplinary system that attempts to provide an environment for a fair and impartial punitive process, and

Whereas, the current system of disciplinary hearings at the University of North Dakota, even under the best possible intentions of those administering the hearings, can be exploitative of the relative lack of student knowledge in regards to University of North Dakota policies, and

Whereas, the presence of an attorney or a non-attorney councilor with a depth of understanding regarding the Code of Student Life and other such policies as may be used in a disciplinary hearing would be beneficial to students, and

Whereas, there are disciplinary hearings that conclude the termination of a student's enrollment at the University of North Dakota is necessary, often times costing the affected student thousands of dollars and severely hindering a student's opportunity to continue in higher education at the University of North Dakota and elsewhere, and

Whereas, a student that has incurred such serious punishments both financially and in loss of reputation ought to be able to appeal that decision through the traditional legal system, an environment in which impartiality and fairness are not in question, and

5-2

Whereas, in the event that the University of North Dakota has expelled a student in error, that student should qualify to receive a reimbursement for any financial loss incurred in the process of the expulsion hearing as well as reinstatement to resume their education with all possible expediency, and

Therefore, be it resolved that the Student Senate ~~of the University~~ of North Dakota fully and unequivocally supports the intention of North Dakota Senate Bill 2150, and urges the 64th Legislative Assembly to adopt this critical piece of legislation, and

Therefore, be it furthest resolved that this body also strongly urges the support of SB2150 from the University of North Dakota and the North Dakota University System as a whole to ensure that the basic rights of the students at institutions of higher education in North Dakota are protected.

Student Body President, Tanner Franklin

4/26/15

#6-1
1/26/15
SB 2150

Holmberg, Ray E.

From: Holmberg, Ray E.
Sent: Sunday, January 25, 2015 7:21 AM
To: Holmberg, Ray E.
Subject: Articles on due process

USA Today

Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

(Photo: Gerry Broome, AP)

STORY HIGHLIGHTS

- **A new law will give college students in North Carolina the right to an attorney in campus courts**
- **The law is the first of its kind in the USA.**
- **The act passed through the state's House of Representatives with a landslide vote of 112-1**

6-2

North Carolina college students no longer have to worry about facing non-academic disciplinary charges from their universities without legal counsel.

On Aug. 23, Gov. Pat McCrory, a Republican, signed a statewide bill that granted students in the stat the right to an attorney in campus courts. Under the Students & Administration Act, students who attend North Carolina's public universities have the right to be represented by a licensed attorney or non-attorney advocate.

The law is the first of its kind in the USA.

Though the new rules cover students and student organizations facing disciplinary charges for violating the university's code of conduct, they do not extend to students accused of academic dishonesty or at schools that have implemented a student honor court.

"Students across America are regularly tried in campus courts for serious offenses like theft, harassment and even rape," said Robert Shibley, senior vice president for the Foundation for Individual Rights in Education (FIRE), in a news release. "Being labeled a felon and kicked out by your college carries serious, life-altering consequences. Because the stakes are so high, students should have the benefit of an attorney to ensure the hearing is conducted fairly and by the rules."

FIRE, a non-profit education foundation aimed at preserving civil liberties on U.S. campuses, advocated for the legislation and worked with a bipartisan group of state legislators to put it in action. The act passed the North Carolina House of Representatives via a landslide 112-1 vote and was ultimately included in the Regulatory Reform Act of 2013, which passed the Legislature on July 26.

Joe Cohn, the legislative and policy director for FIRE, says the strong legislative support was becau lawmakers recognized that denying students the right to hire lawyers in campus disciplinary hearings left them without meaningful due process.

"It is growing impossible to ignore how unfair campus disciplinary hearings have become; the accused is denied representation while the cases against them are argued by deans, administrators and sometimes lawyers with decades of experience," Cohn wrote in an e-mail to USA TODAY. "Legislators from across the political spectrum understood that the stakes in these hearings are too high to allow students to face suspensions or expulsions for non-academic disciplinary charges without legal representation."

For years, the state's K-12 students have had the right to legal representation when facing suspension or expulsion, but university policies prohibited students from having legal counsel present their case to administrators during disciplinary proceedings. Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

It is unclear how the university systems will handle the issue of students who cannot afford representation, as universities are not obligated to appoint counsel to low-income students.

Cohn is confident that low-income students will still benefit from the law, as it allows students to opt for representation by non-legal professionals to ensure that students who cannot afford a lawyer will not be left to represent themselves.

"Low-income students will (still) benefit from the right to hire attorneys because that opens up the door for the possibility of pro bono representation," Cohn wrote. "Moreover, student governments

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could use some of their considerable funding to contract with local attorneys to meet students' need for representation."

Cohn hopes college students nationwide will soon be offered this same right. He says student access to legal representation will help level the playing field, as there are many students who may not be familiar with legal terms, leaving them unprepared for a courtroom proceeding.

"Hopefully, universities will welcome this law's passage and realize that fair processes benefit everyone," Cohn wrote. "Attorney involvement will help result in fair, reliable hearings procedures that follow a standardized set of rules, and that will benefit all parties involved."

Inside Higher Education

Students Lawyer Up

August 26, 2013

Allie Grasgreen

Campus officials like to say that student disciplinary hearings are not court proceedings. There is no such thing as a finding of guilt -- only "responsibility" -- and even in the most serious cases where students are suspended or expelled, they say, the purpose is more to teach good citizenship than it is to punish wrong behavior.

Which is why a new law in North Carolina, the first of its kind, has them worried. The legislation, signed into law on Friday, guarantees any student at a public institution in the state the right to legal representation, at the student's expense, during campus judiciary proceedings.

"A key component of the developmental process of responding to student misconduct is for the student to take responsibility for their own behavior and to learn from the incident," said Bill Haggard, vice chancellor for student affairs at the University of North Carolina at Asheville. "Part of that learning experience is being able to speak on their own behalf, take responsibility for their own behaviors and engage in a conversation about changing their behavior in the future."

That will be a whole lot less likely, officials say, if students have a lawyer speaking for them.

"It's obviously something that most student affairs professionals are not that crazy about," Haggard said.

The law includes an exemption for academic charges such as plagiarism and for hearings where the panel issuing judgment is entirely student-run, as is usually the case at the University of North Carolina at Chapel Hill.

Previously, institutions in the 17-campus UNC System allowed lawyers to attend hearings only when a student was also being tried in criminal court, and only to advise. (Most universities operate this way, or do not permit lawyers at all.) So a lawyer might whisper or pass a note to a student being questioned, but he or she could not [illegible]k on the student's behalf.

[illegible]e: The above paragraph has been updated from an earlier version.)

Officials worry that changing the rules will drag out the length of proceedings -- by who knows how long, if attorneys are able to do things like motion for stays -- and hike up the cost. (Other questions student affairs

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officials are asking: In a sexual assault hearing, if the accused student can afford to lawyer up but the accuser can't, will the university be compelled to provide an attorney? And will campuses have to bring in their own lawyer to represent themselves in each case?)

Part of the problem is that the legislation does not define terms like "representation" and "fully participate," so the extent to which lawyers will be able to participate in proceedings is unclear, officials say.

"From a system perspective, that immediately raises questions," said Thomas Shanahan, interim general counsel at the UNC System. "When the General Assembly adopts legislation, we look to implement it and comply with it to the best of our ability, and the first step, of course, is saying what does this mean and what do the terms mean and how will that work with our processes."

However, some civil liberties advocates, such as the Foundation for Individual Rights in Education, which worked with legislators to get the bill passed, say the new law is crucial to ensure students receive due process in hearings that could make or break their academic future. Though it's uncommon, students can be expelled when found responsible for certain conduct violations.

FIRE has seen "case after case" where students were not awarded due process, universities did not follow their own rules during hearings, and students were otherwise denied their Constitutional rights, Senior Vice President Robert L. Shibley said.

UNC at Chapel Hill has been the subject of one of the most high-profile federal complaints by students who alleged the university violated Title IX of the Education Amendments of 1972 by not following appropriate procedures when hearing sexual assault cases.

"It's a real plus for student rights," he said. "To the extent that universities are now on notice that they're going to have to follow all the rules, that's a good thing."

If a non-college student would face a felony charge in court for a crime of the same nature as the one a student allegedly committed, Shibley says, that student should be afforded the same legal representation. Particularly for first-generation students or those from underprivileged families, he said, protecting and standing up for oneself in front of a bunch of administrators and professors is a difficult and intimidating prospect.

Even with the legislation's provision allowing students to opt for a "nonattorney advocate" if, for example, they can't afford to pony up for a lawyer, it also opens up the door to the most affluent students essentially paying their way out of responsibility, officials said.

"Whoever's able to hire the best and most expensive attorney is likely to win the day," said Chris Loschiavo, president of the Association for Student Conduct Administration and director of student conduct and conflict resolution at the University of Florida. "It raises lots of potential questions and problems and it makes what is an educational and administrative process now into a quasi-courtroom."

Regardless, public North Carolina campuses are now working on revising their conduct codes and related procedures to reflect the students' new right. The UNC System on Friday distributed an advisory on what the law means and how to write it into campus policies.

Hopefully, UNC at Greensboro interim university counsel Imogene Cathy said, that guidance will help campuses keep attorney interference to a minimum.

"I think lawyers who don't know about the higher education setting," she said, "don't appreciate the difference that it's not a legal proceeding. They think everything is a legal proceeding."

TESTIMONY BEFORE THE NORTH DAKOTA SENATE JUDICIARY COMMITTEE

Regarding SB 2150

January 26, 2015

Sen. Connie Triplett, D-18, Grand Forks, ND

The University of North Dakota is part of the North Dakota University System (hereinafter "NDUS" or "the system"). The system is controlled by the State Board of Higher Education (hereinafter "SBHE" or "the board"). Members of the SBHE are appointed to four-year terms by the Governor of the State of North Dakota and confirmed by the state senate. The SBHE sets policy for all colleges and universities within the system. The board also hires and fires the presidents of all institutions under its control. *See* Article VIII, Section 6, North Dakota Constitution, as well as N.D.C.C. ch. 15-10 generally, and §15-10-17 specifically for powers and duties of the State Board of Higher Education.

College and university presidents are granted very broad authority by the SBHE. *See* NDUS Policy 305.1, College and University Presidents' Authority and Responsibilities. In staff termination matters, the University sometimes contracts with the ND Office of Administrative Hearings (OAH) to act as a referee in administrative hearings, but the NDUS is exempt from the requirements of Administrative Agencies Practice Act, N.D.C.C. Ch. 28-32-01 (2)(j). So while it may give the appearance of professionalism and objectivity to have an OAH hearing officer presiding over a hearing, SBHE Policy 608.2(4) effectively substitutes the hearing officer into the role of the "staff personnel board" in the proceedings anticipated under Section 27 of the NDUS Human Resource Policy Manual when the topic is employee termination. While the drafting could certainly be clearer, reading the NDUS policy together with policy manual, the

process as defined anticipates that the hearing officer's role is only to make a recommendation to the UND President.

Long-term staff at institutions of higher education in ND have a constitutionally protected property interest in continued employment through the NDUS. This right is clearly acknowledged in the SBHE policies, which provide for a stepped severance pay based on time in service if a termination is without cause. If a staff member is to be terminated without cause, SBHE Policy §608.2(1) provides for "at least three months" of written notice of termination for employees in their first year of service to the institution and "at least six months" written notice to employees within their second year of service or thereafter. Subsection 7 grandfathers employees who had been on the job prior to September 26, 2012, such that any employee beyond their second year of service is entitled to "at least twelve months" written notice.

SBHE Policy 608.2 subsections (1) and (7) are written euphemistically in terms of providing a certain period of written notice prior to termination, leaving the reader imagining an employee being given a polite, written notice that his or her job will be terminated without cause three, six, or twelve months hence, and the employee then being left to serve out that time period in peace. In actual practice, employees terminated without cause at UND are escorted off campus by law enforcement personnel, made to turn in their keys and all University property, and are told in no uncertain terms in writing that their services are no longer required. However, long-term employees who meet the grandfathering date and the years of service requirement, receive a severance pay consisting of one full year of pay and benefits immediately following their receipt of such notice if the termination is "without cause." Sometimes it happens that the system alleges "cause" in order to terminate a staff member without severance pay.

The two sub-sections of SBHE policy cited above prove clearly that the NDUS acknowledges a property right in continued employment, and has, in fact, quantified it. The actual value of the property right obviously varies from person to person depending on the amount of one's salary and benefits at the time of termination. The United States Court of Appeals for the Eighth Circuit has recognized a constitutionally protected property interest in continued employment in many cases related to educational and other public employees. *Morris v. Clifford*, 903 F.2d 574, 576 (8th Cir. 1990), and numerous cases cited therein. While *Morris* involved the rights of a tenured faculty member, it is closely on point regarding the basic premise that a property right exists in university policies such as those cited above.

The Fifth Amendment to the United States Constitution tells the federal government that no one may be "deprived of life, liberty or property without due process of law." In 1868, the ratification of the Fourteenth Amendment to the United States Constitution applied the same obligation to the states: that no *state* shall deprive any person within its jurisdiction of life, liberty or property without due process of law. **The North Dakota state constitution goes one step further and provides that our state's citizens have among their inalienable rights, "acquiring, possessing and protecting property *and reputation*."** Article I, Constitution of North Dakota. [Emphasis added.]

There can be no deprivation of due process by a state unless there is some state action. The state action in the case of staff termination or student discipline is the very broad authority delegated by the SBHE to Presidents of our state's institutions of higher education. NDUS Policy 305.1, College and University Presidents' Authority and Responsibilities. When a university or college president uses the authority granted him by the State of North Dakota through its State Board of Higher Education to deprive a staff member of year's salary and

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benefits, that action constitutes a deprivation of a property interest. When the deprivation involves a person's good name and reputation which will surely limit future employment opportunities, such action surely qualifies as a deprivation of a liberty interest.

The 1972 case, *Board of Regents v. Roth*, 408 U.S.564, contains a thorough summary of procedural due process concepts. Regarding the deprivation of the liberty interest, the Court stated:

> "While this Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fourteenth Amendment], the term has received much consideration and some of the included things have been definitely stated. . . . In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. . . .
>
> . . . "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." [Citations omitted.]
>
> . . . "[t]o be deprived not only of present government employment but of future opportunity for it certainly is no small injury . . . ." [Citations omitted.]

Boddie v Connecticut, 401 U.S. 371, 400-401 (1971) lays out timing as the "root requirement" of procedural due process:

> The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. In short, "within the limits of practicability," [citation omitted], a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.

The legal test is whether that *opportunity to be heard* was a meaningful opportunity to be heard. The Eighth Circuit Court of Appeals in 1975 listed four basic requirements for meeting procedural due process in *Brouillette v. Bd. of Directors of Merged Area IX*, 519 F.2d 126, 128:

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> Minimal requirements of due process are generally recognized to be: (1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them; (2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges; (3) a reasonable time and opportunity to present testimony in his or her own defense; and (4) a hearing before an impartial board or tribunal. [Citation omitted.] Both the notice afforded and the opportunity to be heard must be appropriate to the nature of the charges made.

The following year, the U.S. Supreme Court announced a balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Where earlier cases had listed specific procedures to be followed in specific cases, the Court in *Mathews* suggested three factors to be analyzed and balanced: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985), the lesson is that minimum procedural requirements are a matter of federal law, notwithstanding the fact that a state government may have specified its own procedures that it may deem adequate:

> The point is straightforward: the Due Process Clause provides that certain substantive rights -- life, liberty, and property -- cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process "is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." [Citation omitted.] In short, once it is determined that the Due Process Clause applies, "the question remains what process is due." [Citation omitted.] The answer to that question is not to be found in the Ohio statute.

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I hope this very basic review of due process concepts will be especially useful to the non-lawyer members of the committee. If you have additional questions as you deliberate, it is comforting that some members of the committee are lawyers themselves and can provide further depth as required.

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Aaron Weber
NDSU Student Government
SB 2150 Testimony

Chairman Hogue, members of the committee, for the record my name is Aaron Weber, Governmental Affairs Executive for North Dakota State University Student Government. Today I am here representing nearly 15,000 students of NDSU. I am also here today to represent UND Student Government and the North Dakota Student association, both of which were unable to be here this morning. Collectively we represent the 48,000 students of the NDUS and are here to voice our support for Senate Bill 2150, which brings due process to college students in North Dakota.

I'd like to begin this morning with a story from the Chief Justice of the NDSU Student Government Student Court, Josh Fergel. Yesterday at Student Senate, he shared a story regarding a conflict resolution board hearing that he felt was not handled properly. The student's board hearing came after a previous three-hour meeting, and started at 9pm. That student was subsequently found guilty of the alleged allegations. He then elected to appeal that ruling. Josh and the rest of the Student Court reviewed the appeal and after only ten minutes of deliberation, concluded that an error had occurred. It is our hope that with an attorney present, these sorts of incidences could be avoided.

The point needs to be clear that these types of mistakes do happen with a degree of frequency. There is evidence that a lack of due process does exist at NDUS institutions. Students are sometimes being punished based off of little evidence, and organizations are demoralized with false accusations affecting their reputations for years to come. There is evidence of a problem on North Dakota campuses, and Senate Bill 2150 helps to alleviate that.

That is why we stand in support of Senate Bill 2150, which would "create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education." It is important to note that this does not require every student have an attorney present at every hearing. It merely gives the student and organizations the option to. Furthermore, any student that has incurred such serious punishments ought to be able to appeal that decision through the traditional legal system. The presence of an attorney or a non-attorney counselor, with a depth of understanding regarding an institution's student conduct policy would be beneficial to students. Prohibiting college students from having the right to legal representation when their reputations are on the line does not make sense. Therefore, we urge the 64th Legislative Assembly to adopt this critical piece of legislation and will yield to any questions from the committee.

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SR-20-15

A Resolution in Support of SB 2150

Whereas, NDSU currently affords students the opportunity to have an attorney present during disciplinary proceedings on campus, and

Whereas, that attorney is allowed to advise their client but is not allowed to participate in the hearing, and

Whereas, SB 2150 would allow for an attorney to be present and also participate in the hearing, and

Whereas, these proceedings can have a life changing impact on those participating, therefore be it,

Resolved, that NDSU Student Government supports the passage of SB 2150.

Respectfully submitted,

Sarah Russell
Student Body President

Hilary Haugeberg
Student Body Vice-President

Aaron Weber
Executive Commissioner of Governmental Relations and Intercollegiate Affairs

Megan Matejcek
Assistant Executive Commissioner of Governmental Relations and Intercollegiate Affairs

Josh Fergel
Chief Justice | Student Court

Mathew Warsocki
Associate Justice | Student Court

#8G1

	BSC	DCB	DSU	LRSC	MaSU	MiSU	NDSCS	NDSU	UND	VCSU	WSC	TOTALS
Conduct Reports/Complaints Received	114	71	121	14	36	165	not provided	1328	1213	11	50	3123
Judicial/Conduct Hearings	9	30	67	14	21	53	190	1245	1083	11	34	2757
Alcohol	6	14	34	8	16	49	150	945	634	10	33	1899
Other Drugs	0	6	3	2	2	2	3	74	81	0	0	173
Violence	0	5	0	0	1	1	13	15	6	1	3	45
Sexual Misconduct	0	1	0	0	1	0	0	3	2	0	1	8
Property Damage	0	0	3	4	1	1	22	0	9	0	1	41
Other	3	0	0	0	0	0	0	0	0	0	0	3
Suspensions	0	5	0	0	0	1	2	3	9	1	0	21
Expulsions	0	2	0	0	0	3	0	0	NA	0	0	5

5 - "all from housing" 2013 Calendar Yr

LRSC - Request was made for them to work on pulling their spring 2014 data and provide it as soon as they can, so that we have consistent data. I stated that we would use the 2013 in the meantime
WSC - Request made for fall 2014 data
UND- does not have expulsion as a sanction for students per its Code of Student Life

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Testimony on SB 2150
Senate Judiciary
January 26, 2015

Chairman Hogue and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota.

Last year alone, our programs provided services to 913 sexual assault victims; 40% of those victims were under the age of 18 at the time of the assault and a high percentage (40%) of the victims were assaulted by an acquaintance, friend or relative. Additionally, 71% of victims reported the assault to law enforcement.

As we understand it, SB 2150 outlines a process for disciplinary hearings and a right to counsel for students and organizations accused of misconduct including sexual assault and sexual harassment. It should be noted that one in five women will be a victim of completed or attempted sexual assault while in college. (Krebs, Lindquist, Warner, Fisher, & Martin, 2007) And among college women, nine out of 10 victims of rape and sexual assault knew the person who assaulted them (Fisher, Cullen, & Turner, 2000). Sexual assault on college campuses has recently been highlighted in the national media especially in light of the recent reauthorization of the Violence Against Women Act (VAWA) or what is commonly referred to as the Campus Sexual Violence Elimination (SaVE) Act. The SaVE Act is an amendment to the Clery Act and requires that all institutions of higher learning must educate students, faculty, and staff on the prevention of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. This legislation increases standards of campus response, disciplinary proceedings, and prevention education.

Our concern with the bill is that we would like to ensure victims have access to or are provided the same access to right to counsel in cases of sexual assault or harassment. There are many reasons that victims may give inconsistent details related to the sexual assault including the response to the trauma (assault), embarrassment, fear of not being believed, afraid of what may happen if they report the assault, and that they will be blamed for their own behavior. It's also important to note that false reports of sexual assault are around 2-8% which is no higher than any other crime. These reasons along with the protections afforded to victims under VAWA highlight the importance of victims having access to counsel or support in these disciplinary hearings as well.

Thank you.

10-.1

SB2150
Senate Judiciary Committee
January 26, 2015

Christopher S. Wilson, General Counsel at NDUS - Fargo
701-231-7215 | christopher.s.wilson@ndus.edu

Chair and Committee Members: I am Chris Wilson, General Counsel for the North Dakota University System in Fargo which has responsibility for North Dakota State University and North Dakota State College of Science. I'm here today to provide information on SB2150. The bill would have a significant impact on the student disciplinary processes of the institutions within the North Dakota University System.

For starters, let me say that I believe that we are supportive of what we believe to be the goal of SB2150, namely to help ensure that nobody facing institutional discipline is wrongly found to have been responsible for committing a violation. That is a goal that we all share, and I would like to thank the sponsors of this bill for previously meeting with a group of higher education officials to discuss the implications of this bill. It is my understanding that, based upon those conversations, this bill is going to be amended to remove the language dealing with the judicial appeal process and to remove the references to student organizations. We support that amendment.

However, SB2150 would still permit an attorney to "fully participate" in the disciplinary process, and we believe that this change would have negative implications to the campus both financially and educationally. We believe that the goal of the bill can and should be achieved in a more narrowly tailored way. Given my understanding of the amendment, I will limit my prepared testimony to the issue of attorney involvement.

In order to better understand our position on the bill, I would like to spend a minute explaining the legal background of student discipline in public education. Fundamentally, discipline at educational institutions is aimed at two goals, maintaining the safety of the institution and educating the misbehaving student through a process of determining responsibility and imposing appropriate discipline. Please understand that the administrations at each of the NDUS institutions cannot act arbitrarily regarding student discipline. As required by State Board of Higher Education policy 514, each institution has a detailed disciplinary process in place which sets forth the types of violations, the nature of the investigatory and hearing process, the types of sanctions and the appeals process.

In addition to internal policy, federal law requires that each public institution have an appropriate disciplinary process. As I am sure you are aware, the 14th Amendment to the U.S. Constitution provides, in part: "nor shall any state deprive any person of life, liberty, or property, without due process of law." What you may not know, however, is that the U.S. Supreme Court in the case of *Goss v. Lopez,* 419 U.S. 565 (1975) established that students in public primary and secondary schools have a property and liberty interest in their public education. This means that students in public schools cannot be removed from school without due process. Federal appellate courts, including the 8th Circuit which covers North Dakota, have expanded this rule to include students in post-secondary institutions, including the NDUS institutions. As a result, each NDUS institution is required to ensure that a student receives appropriate due process before any suspension is imposed.

Each year, the NDUS institutions collectively process thousands of incidents ranging from minor infractions to serious, violent offenses. The system is currently working without major problems and provides sufficient due process to meet federal legal requirements. However, SB2150 would inject the use of attorneys' full participation into this process. I should point out that attorneys are currently allowed to assist their clients through the disciplinary process. They may attend hearings and provide guidance to their clients during the hearings. They are not allowed, however, to participate in the hearings through questioning or making motions or arguments. Limiting attorney involvement in the hearing process is a common practice in higher education throughout the country. In fact, we are only aware of one other state, North Carolina, which permits attorneys to fully participate in student judicial hearings and that law just went into effect last year.

We are concerned that allowing attorneys to fully participate in the disciplinary process will cause unneeded and expensive complications. Please remember that the bill is not aimed at just the most serious offenses. It permits an attorney to participate in any disciplinary case no matter how minor.

Moreover, right now, disciplinary hearings are conducted with non-legal administrative staff who are trained in student affairs issues or with conduct boards made up of students trained in student judicial rules. If attorneys are allowed to participate, then we are concerned that these processes will be insufficient to deal with the level of legal complexity that will ensue with attorney participation. As a result, the institution's cases may need to be prepared and presented by an attorney and the hearing officer or board may need to be replaced with an attorney or administrative law judge. What was once a straight-forward educational process could evolve into a complicated legal hearing. Not only would this negate any educational aspect to the hearing, it would also come with a significant cost to the institutions, at a time when expenditures by institutions are under scrutiny.

We are simply concerned that there may be significant unintended consequences from this law. Certainly no system of discipline is perfect, and there are going to be times that an erroneous decision is produced. However, we do not believe that full attorney participation available for every single student code violation is appropriately tailored to remedy this problem. Instead, we are currently reviewing the student codes of all the NDUS institutions to ensure that there is an appropriate post-appeal process, which could be utilized by students in the event that newly discovered evidence indicates that a erroneous decision was made. This type of procedural fix would better meet the goal of this bill, and it is more appropriately dealt with at the institutional policy and procedure level than with a state law.

I ask for a do not pass on SB2150 as currently drafted and am available to answer your questions. Thank you.

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Title.

Prepared by the Legislative Council staff for
Senator Armstrong
February 9, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2150

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Disciplinary proceedings - Right to counsel for students and organizations - Appeals.

1. Any student enrolled at an institution under the control of the state board of higher education has the right to be represented, at the student's expense, by the student's choice of either an attorney or a nonattorney 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 disciplinary policies. This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion from the institution. This right does not apply to matters involving academic misconduct.

2. Any student organization officially recognized by an institution under the control of the state board of higher education has the right to be represented, at the student organization's expense, by the student organization's choice of either an attorney or nonattorney advocate, who may fully participate during any disciplinary procedure or during any other procedure adopted and used by the institution to address an alleged violation. This right only applies if the disciplinary proceeding involves a violation that could result in the suspension or the removal of the student organization from the institution.

3. a. Any student who is suspended or expelled from an institution under the control of the state board of higher education for a violation of the disciplinary or conduct rules of that institution and any student organization that is found to be in violation of the disciplinary or conduct rules of that institution may appeal the institution's decision to the same institutional body that conducted the original proceeding.

   b. The student or a student organization must file the appeal no later than one year after the day the student or the student organization receives final notice of discipline from the institution. The right of the student or the student organization under subsection 1 or 2 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 to the appeal.

#1-2

c. 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.

4. 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 suspension or expulsion. In any successful appeal brought under subsection 3, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which had not been previously refunded."

Renumber accordingly

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SB 2150 Due Process for students

Chief Justice Gerald VandeWalle, State of the Judiciary presentation, January 7, 2015

Most of us learned, or should have learned in school, that in 1215 at Runnymede near Windsor Castle, King John of England sat under a tree and signed the Magna Carta, the Great Charter. That document is the foundation of Constitutional rights and liberties and is the foundation of law that the entire court system of the United States relies on even today.

Among the principles laid out in the document is the concept of due process. Due process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including the right to fair hearing before a fair and impartial court with the power to decide the case. It encompasses the principle that the state must respect all of the legal rights that are owed to a person. It is a constitutional guarantee that all legal proceedings will be fair and that the application of laws will not be unreasonable, arbitrary or capricious.

1.1

UND Student Senate

SB 1415-05

Senate Resolution

To: The Student Senate of the University of North Dakota

Authors: Matt Kopp – Greek Housing Senator

Sponsors: John Mitzel – Off-Campus Senator

CC: Tanner Franklin - Student Body President, Brett Johnson - Student Body Vice President, Cassie Gerhardt - Student Government Advisor, Andrew Frelich – Student Organization Funding Agency Advisor; Dr. Lori Reesor – Vice President for Student Affairs, Cara Halgren – Associate Vice President for Student Services & Dean of Students

Date: January 25th, 2014

Re: Support for North Dakota Senate Bill 2150

Whereas, one of the main goals of the University of North Dakota Student Government should be to protect the rights of students, and

Whereas, whenever it is appropriate to expand the rights that students possess on campus and within the broad scope of the legal system it should be the priority of this body to secure those rights, and

Whereas, Senate Bill 2150, brought forth by the 64th North Dakota Legislative Assembly, seeks to protect and expand the rights of students by affording them the right to council in administrative disciplinary hearings, and

Whereas, the right to representation is a critical component of any just disciplinary system that attempts to provide an environment for a fair and impartial punitive process, and

Whereas, the current system of disciplinary hearings at the University of North Dakota, even under the best possible intentions of those administering the hearings, can be exploitative of the relative lack of student knowledge in regards to University of North Dakota policies, and

Whereas, the presence of an attorney or a non-attorney councilor with a depth of understanding regarding the Code of Student Life and other such policies as may be used in a disciplinary hearing would be beneficial to students, and

Whereas, there are disciplinary hearings that conclude the termination of a student's enrollment at the University of North Dakota is necessary, often times costing the affected student thousands of dollars and severely hindering a student's opportunity to continue in higher education at the University of North Dakota and elsewhere, and

Whereas, a student that has incurred such serious punishments both financially and in loss of reputation ought to be able to appeal that decision through the traditional legal system, an environment in which impartiality and fairness are not in question, and

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Whereas, in the event that the University of North Dakota has expelled a student in error, that student should qualify to receive a reimbursement for any financial loss incurred in the process of the expulsion hearing as well as reinstatement to resume their education with all possible expediency, and

Therefore, be it resolved that the Student Senate of the University of North Dakota fully and unequivocally supports the intention of North Dakota Senate Bill 2150, and urges the 64th Legislative Assembly to adopt this critical piece of legislation, and

Therefore, be it furthest resolved that this body also strongly urges the support of SB2150 from the University of North Dakota and the North Dakota University System as a whole to ensure that the basic rights of the students at institutions of higher education in North Dakota are protected.

_____

Student Body President, Tanner Franklin

Holmberg, Ray E.

m:	Bruce Gjovig <bruce@innovators.net>
:	Sunday, January 25, 2015 2:09 PM
o:	Casper, Jon; Hogue, David J.; Armstrong, Kelly; Luick, Larry E.; Nelson, Carolyn C.; Grabinger, John
Cc:	Holmberg, Ray E.; Delmore, Lois M.; Johnson, Mary C.; Larson, Diane K.
Subject:	FOR SB 2150 Due Process for College Students & Student Organizations

FOR SB 2150 Due Process for College Students & Student Organizations

TO: Members of Senate Judiciary

Unfortunately I am not able to be at the hearing on Monday. Please accept this testimony in support of SB 2150

1. **There is nothing worse in life than being falsely accused**... other than also being punished when innocent. That often happens ***when due process is denied*** such as on college campuses where attorneys are denied engagement in campus hearings. *Some power needs to be granted to the powerless* to stop innocent young people from being suspended, expelled, or falsely punished.

2. The North Dakota legislation is modeled after a **North Carolina law** approved in 2013, the first of its kind in the nation. **North Dakota would become the second state** to let students and student organizations engage an attorney when they are accused of non-academic infractions.

3. The legislation is too late for **Caleb Warner of Fargo**, whose wrongful treatment at the hands of the UND administrators is all too typical. Had it not been for a brave mother we would not know the ugly details of him being falsely accused of rape and expelled at a campus disciplinary proceeding despite the police declaring him innocent and putting out a warrant out for the arrest of his accuser for filing a false police report. It took nearly *2 years* to get the expulsion repealed following *repeated requests* for a rehearing plus lots of pressure from his mother, alumni, the Wall Street Journal and national organizations. His innocent life was ruined, and any Google search demonstrates the ongoing damage to his reputation. Who helps the other students who are falsely accused and punished?

4. I am advisor for several UND students and student groups, and **innocent students are punished every month**, under the guise of controlling students' behavior. There has been a severe loss of student advocates on campuses, and college administrators have become very punitive and controlling, often giving the illusion of due process, but it is *not due process.*

5. A hearing before an **impartial fact-finder and decision-maker is essential to due process**, but University disciplinary hearings are *not impartial.* The prosecutor and the judge are often the same person, or report to the same person, and appeals are made to the same decision makers, who see students as a threat to their control. Strange how they reject all appeals and think they never make a mistake. They often presume and claim a student is guilty as they did Caleb Warner, long after others know better. The administrator's primary loyalty - financially, personally and legally - is to the university *NOT the student.* That is why attorney's must be present, as too many administrators have bias, a conflict of interest, and have predetermined the outcome of the case – or their superiors have – *against the student.*

6. Remember the **Kangaroo court** at the **University of Virginia** after the Rolling Stone article in October. University administrators were quick to condemn and punish innocent members of a fraternity for months, which then were subject to mob rule because these false charges were everywhere in the media. Plus sanctions were placed on ALL fraternities for months i.e. punish lots more innocent

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students – with still no apology, no admission of wrong doing, or making things right. This kangaroo court atmosphere is all too prevalent on campuses because of the lack of due process and legal oversight. Innocent students and innocent student organization are punished often, under the guise of controlling behavior. *But punishing innocent people is wrong – **always**.*

7. Like the North Carolina law, **appeal to a district court is essential** and legal counsel is needed because the college disciplinary hearing is usually the last reasonable time to influence bad decisions. An administrative appeal on campus is generally futile as the administrators defend their decisions, and courts have given deference to the university system. Until now, it has been almost impossible for an accused student to prevail on appeal on campus or in courts. The absence of meaningful review makes it critically important to allow students to go to District Court to prove their innocence – even if no citizen should NOT have to prove their innocence, but college students do.

8. **It is very important to include student organizations.** Many innocent student organizations are punished, esp. fraternities. The misdeeds of one or a few members of an organization do NOT justify disciplinary action against the entire association and all of its members – unless the organization sanctioned and approved of the action of those few. For such a collective punishment to be just, the group *in its totality* should have shared a criminal intent or conspired in the commission or cover-up of a crime. **The First Amendment's protection of *freedom of association*** must be honored, and done so vigorously. There should be **no guilt by association** without specific evidence that the offending members were acting in accord with the organization's practices and policies, with the formal wishes or knowledge of the members, or with the tacit approval of the organization's leadership. The First Amendment's guarantee of freedom of association would mean little if an entire group could be prosecuted, or even disbanded, because of the *unauthorized actions* of a few. Yet there are scores of cases at UND of innocent students being punished, and student groups being punished, because of the actions of a single person – with no prior knowledge of the organization or its many members. This must be stopped just as the outrageous sanctions at the University of Virginia.

9. **Higher Ed put a fiscal note of $2.5** million based on 1,000 hearings per semester (!) currently and assumption that some would opt to pursue legal representation and/or appeal. http://www.legis.nd.gov/assembly/64-2015/fiscal-notes/15-0596-02000-fn.pdf?20150124221812 Since the student pays his own attorney fees, and the campus only pays when students are found innocent after being falsely accused, this is a tacit admission it will be costly to correct their egregious campus disciplinary system. *Do not let campus take these funds out of student tuition and fees.*

10. **Punishing the innocent never works, not even the guilty**. College administrators punish in anger, in frustration and an attempt to control and dominate, and get instant relief from their improper actions. It makes the punisher feel good, but does little positive for the punished. ***Administrators do not want to do the hard work of positive modeling.*** And so, what has been learned? The punisher has learned next time they feel angry and frustrated that if they just punish they will feel better. The punished has learned something different - next time don't get caught, avoid the administrator at all costs, and they learn this is not a place they want to be –a hostile environment that is not about learning. Our state cannot afford to buy into negative punishment policies, negatively impacting our future talent.

Thank you for your support of SB 2150.

Bruce Gjovig
CEO & Entrepreneur Coach
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Grand Forks Herald EDITORIAL
January 14, 2015

OUR OPINION: Accused students need due-process rights

By **Tom Dennis**

You're a college student accused of sexual assault, and your disciplinary hearing at a North Dakota University System campus is under way.

If you say nothing, that can be used against you. But if you speak up, that can be used against you, too - especially later. For if criminal charges result from the accusation, then everything you say at the hearing will be admissible in court.

What to do?

Start here: Get a lawyer. And thank a few key North Dakota lawmakers, assuming their proposal to give students in such situations the right to an attorney becomes law.

Over the past few years, campuses and American society have grown a lot more sensitive to people who claim to have been sexually assaulted. That's good, because some of the changes were long overdue. Too many victims of sexual assault told of dismissive investigators, rude questioning, extreme reluctance to go after star-athlete suspects and other deep procedural flaws.

But now, Lady Justice's scale has tipped too far; and on campus, it's the accused who too often are being mistreated. Under pressure from Washington, campuses have set up systems that can resemble kangaroo courts, complete with investigators doubling as judges and juries, minimal standards of finding guilt, no power to cross-examine witnesses and limited ability to appeal.

These procedures raise the odds of innocent students being found guilty and then expelled. That's an outcome that can ruin lives.

And that, in turn, is why the accused in such proceedings deserve due-process rights. These start with the rights to an attorney and to appeal, which Senate Bill 2150 provides.

The bill - whose sponsors include Sen. Ray Holmberg and Rep. Lois Delmore, both of Grand Forks - lets a student not only hire an attorney but also have that attorney fully participate in the proceedings, something he or she could not do today.

Also, the bill lets students facing the most serious punishments appeal to the district court. That, too, seems appropriate, given that the consequences of being wrongfully suspended or expelled could be so dire.

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These changes aren't meant to return sexual-assault victims to the Dark Ages of indifference or contempt. Instead, they're meant to bring balance: to recognize that increased sensitivity to accusers' concerns also warrant heightened sensitivity to the rights of the accused.

And North Dakota lawmakers aren't alone in calling for this balance. In October, 28 members of the Harvard Law School faculty complained of their school's even more one-sided procedures in a letter to the Boston Globe.

"Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused and are in no way required by Title IX law or regulation," the letter states.

Harvard Law Professor Nancy Gertner is one of those 28 faculty members as well as a retired federal judge. In a recent column, she describes how she sees the issue:

"However flawed, the way we test narratives of misconduct - on whichever side - is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder," Gertner writes.

"While we know ... that even these 'tests' can produce wrongful convictions, they are at least more likely to produce reliable results than the opposite - a one-sided, administrative proceeding, with a single investigator, judge, jury and appeals court."

The Legislature should approve and the governor should sign Holmberg and Delmore's bill.

Sherry Warner Seefeld

Testimony on SB 2150 January 26, 2015

Good Morning Chairman Hogue and members of the Senate Judiciary Committee

Thank you for this opportunity to speak with you.

Sexual assault is a horrific crime and we all must make every effort possible to prevent such assaults from happening. I am happy to see implementation of much needed education and programming aimed at prevention and intervention. All of us can strive to do a much better job of supporting, discussing and promoting such activities, not just on campus but throughout every facet of society.

However, in our zeal to make campus a safe place for all students there is a disturbing trend which has, in fact, made colleges and universities decidedly unsafe for a group of students who are currently denied basic civil rights, those accused of sexual assault. As Americans, we have constitutionally guaranteed protections from an overzealous government – an assumption of innocence until proven guilty, the right to counsel, the right to not self-incriminate, the right to present witnesses and evidence, the right to cross-examine, the right to appeal, and freedom from double-jeopardy to name a few. Most of these rights currently do not exist on college campuses for those accused of serious crimes.

You do not have to believe there are large numbers of false accusations to insist that the process used to determine guilt or innocence be fair. After all, stigma of the very accusation of sexual assault remains with a person the rest of their life.

I think we can safely say, all of us want to protect our young people from sexual assault, however, students on today's campuses are facing a

rape hysteria similar to that of McCarthyism. Whipped up by oft repeated statistics based on unreliable and completely debunked research, some of it unfortunately coming from North Dakota, administrators, faculty and students are quick to rush to judgment on sexual assault accusations. Little of this research data is supported by Bureau of Justice and FBI statistics on rates of rape and other types of sexual assault in the US.

Colleges and universities are facing enormous pressure from federal and state governments as well as from alumni, to be tough on sexual assault, resulting in thousands of students being found guilty more on mere accusations rather than on evidence.

It is in this atmosphere both claimants and respondents must traverse the university disciplinary hearing process. Both deserve to have counsel by their side to help them navigate a very complex system which has potential implications for criminal justice proceedings and for their entire futures.

I would like to share with you a little about my son Caleb's experience which may illustrate the importance of SB2150.

First, it is important to understand that all documents and recordings collected during the university investigation and hearing can be used against someone in a potential future criminal justice proceeding.

When Caleb was called to Dean Jeffrey Powel's office on January 27, 2010, he was asked to provide an oral and written account of his relationship with the complainant. Dean Powell engaged in an investigatory questioning of Caleb while keeping his own personal notes. At no time was Caleb told that he could have an attorney with him nor that everything he said could be used to prosecute him in a court of law. In fact, it was quite the opposite. Dean Powell assured Caleb that the University looked at him equally to the complainant as student of UND and deserving of their

protection. Dean Powel also assured Caleb that a thorough investigation would be conducted in order to get to the truth. Caleb, who knew there was more than ample evidence and witnesses who could substantiate his own story and negate all aspects of the complainant's story, left the Dean's office "knowing" everything would be straightened out. In fact, that evening when he called to tell me this meeting had happened he reassured me he did not need an attorney when I asked if we should look for some advice. He truly believed in his university, that there was some mistake and everything would be straightened out. Truth always wins, right?

What he and I did not understand at that time was that Dean Powell was both the investigator and the prosecutor and apparently was not sufficiently motivated to conduct a thorough investigation.

Luckily, my gut told me we needed an attorney to protect Caleb's rights and I hired Steven Light who, from that point forward, communicated with UND on Caleb's behalf.

Three days later, after the supposed thorough investigation, Caleb was notified there would be a disciplinary hearing on February 11 and he was assigned a university advisor to help him understand the hearing process. Caleb was told he could have his attorney present but that attorney could not speak or in any way participate in the hearing. If it was determined that Caleb's attorney was violating this stipulation he would be removed from the room.

Imagine that – A 23-year old must defend himself against an accusation which in the criminal justice system is a felony and has mandatory prison time attached, with only 11 days of preparation, in an audio recorded hearing where anything he said could be used against him in a criminal court.

Let's fast forward to the hearing. The following people were in the room

Caleb, Mr. Light, his attorney and the assigned university **advisor**.

A hearing panel composed of 3 students and 3 faculty members

Four witnesses for Caleb who appeared one-by-one. The complainant did not present any witnesses nor any additional evidence.

Director of the Woman's Center – who sat next to the complainant holding her hand, hugging and patting her throughout the hearing, thus non-verbally providing a strong message to those in the room.

Dean Jeffrey Powell – investigator and now prosecutor, with years of experience in this role in hearings.

Julie Ann Evans – General Counsel of UND – who not only participated in the hearing in an adversarial way, but also badgered all of his witnesses. Additionally she controlled the narration of the proceedings by making statements or expressing her opinions. One example of this is when she asked each witness if he was a fraternity brother and then proclaiming to all in the room "We all know fraternity brothers lie for each other" thus dismissing their testimony.

She also actively badgered non-law trained Caleb by vociferously objecting to his questions such as his query "Do you know what 911 is for?" which he asked the complainant. This seems like a logical question to ask someone who voluntarily admitted in her statement she had access and used her phone during the entire evening of the alleged assault.

Complainant had a choice of whether to answer questions.

The rest of the story is probably well known to many of you. By a Preponderance of Evidence Standard, (not federally mandated at that time) the hearing panel found it was at least 50.01% more likely Jessica's story was true than Caleb's and he was immediately expelled. His academic career was over.

He had only five days to ask for an appeal after which no appeal would be granted.

In order to prepare for a potential court case Mr. Light requested a copy of either the audio recording or a redacted transcript. This request was denied. To this date neither has ever been provided.

Three months later, after a police investigation concluded, the Grand Forks district attorney issued a warrant for the complainant's arrest for filing a false police report.

Yet, it took an additional year and a half of efforts by attorneys, alumni, a civil rights organization, media, and myself before UND would vacate the sanctions because, as Ms. Evans insisted, "there really wasn't any new evidence" even though the detective had actually completed a thorough investigation and interviewed several more witnesses, including the complainant's boyfriend and other friends (hers and his) who actually supported Caleb's story.

Punishing innocent people is traumatically destructive and is poor policy which does damage also to true victims. Our entire society has a vested interest in creating fair and just processes for determining guilt or innocence on such important accusations. It is a slippery slope when a society deems it okay to fall back into feudal-like justice systems where select groups of people have the power to accuse and convict any who they name.

Please don't let cost be a reason to throw away lives. My son's life and the lives of all our students are worth the effort to get it right.

I strongly urge you to pass SB2150. Constitutional rights should not disappear on our college campuses. Protection of those rights through access to counsel should be guaranteed to all.

Holmberg, Ray E.

From: Holmberg, Ray E.
Sent: Sunday, January 25, 2015 7:21 AM
To: Holmberg, Ray E.
Subject: Articles on due process

USA Today

Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

(Photo: Gerry Broome, AP)

STORY HIGHLIGHTS

- **A new law will give college students in North Carolina the right to an attorney in campus courts**
- **The law is the first of its kind in the USA.**
- **The act passed through the state's House of Representatives with a landslide vote of 112-1**

North Carolina college students no longer have to worry about facing non-academic disciplinary charges from their universities without legal counsel.

On Aug. 23, Gov. Pat McCrory, a Republican, signed a statewide bill that granted students in the state the right to an attorney in campus courts. Under the Students & Administration Act, students who attend North Carolina's public universities have the right to be represented by a licensed attorney or non-attorney advocate.

The law is the first of its kind in the USA.

Though the new rules cover students and student organizations facing disciplinary charges for violating the university's code of conduct, they do not extend to students accused of academic dishonesty or at schools that have implemented a student honor court.

"Students across America are regularly tried in campus courts for serious offenses like theft, harassment and even rape," said Robert Shibley, senior vice president for the Foundation for Individual Rights in Education (FIRE), in a news release. "Being labeled a felon and kicked out by your college carries serious, life-altering consequences. Because the stakes are so high, students should have the benefit of an attorney to ensure the hearing is conducted fairly and by the rules."

FIRE, a non-profit education foundation aimed at preserving civil liberties on U.S. campuses, advocated for the legislation and worked with a bipartisan group of state legislators to put it in action. The act passed the North Carolina House of Representatives via a landslide 112-1 vote and was ultimately included in the Regulatory Reform Act of 2013, which passed the Legislature on July 26.

Joe Cohn, the legislative and policy director for FIRE, says the strong legislative support was because lawmakers recognized that denying students the right to hire lawyers in campus disciplinary hearings left them without meaningful due process.

"It is growing impossible to ignore how unfair campus disciplinary hearings have become; the accused is denied representation while the cases against them are argued by deans, administrators and sometimes lawyers with decades of experience," Cohn wrote in an e-mail to USA TODAY. "Legislators from across the political spectrum understood that the stakes in these hearings are too high to allow students to face suspensions or expulsions for non-academic disciplinary charges without legal representation."

For years, the state's K-12 students have had the right to legal representation when facing suspension or expulsion, but university policies prohibited students from having legal counsel present their case to administrators during disciplinary proceedings. Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

It is unclear how the university systems will handle the issue of students who cannot afford representation, as universities are not obligated to appoint counsel to low-income students.

Cohn is confident that low-income students will still benefit from the law, as it allows students to opt for representation by non-legal professionals to ensure that students who cannot afford a lawyer will not be left to represent themselves.

"Low-income students will (still) benefit from the right to hire attorneys because that opens up the door for the possibility of pro bono representation," Cohn wrote. "Moreover, student governments

could use some of their considerable funding to contract with local attorneys to meet students' need for representation."

Cohn hopes college students nationwide will soon be offered this same right. He says student access to legal representation will help level the playing field, as there are many students who may not be familiar with legal terms, leaving them unprepared for a courtroom proceeding.

"Hopefully, universities will welcome this law's passage and realize that fair processes benefit everyone," Cohn wrote. "Attorney involvement will help result in fair, reliable hearings procedures that follow a standardized set of rules, and that will benefit all parties involved."

Inside Higher Education

Students Lawyer Up

August 26, 2013

[redacted]ie Grasgreen

Campus officials like to say that student disciplinary hearings are not court proceedings. There is no such thing as a finding of guilt -- only "responsibility" -- and even in the most serious cases where students are suspended or expelled, they say, the purpose is more to teach good citizenship than it is to punish wrong behavior.

Which is why a new law in North Carolina, the first of its kind, has them worried. The legislation, signed into law on Friday, guarantees any student at a public institution in the state the right to legal representation, at the student's expense, during campus judiciary proceedings.

"A key component of the developmental process of responding to student misconduct is for the student to take responsibility for their own behavior and to learn from the incident," said Bill Haggard, vice chancellor for student affairs at the University of North Carolina at Asheville. "Part of that learning experience is being able to speak on their own behalf, take responsibility for their own behaviors and engage in a conversation about changing their behavior in the future."

That will be a whole lot less likely, officials say, if students have a lawyer speaking for them.

"It's obviously something that most student affairs professionals are not that crazy about," Haggard said.

The law includes an exemption for academic charges such as plagiarism and for hearings where the panel issuing judgment is entirely student-run, as is usually the case at the University of North Carolina at Chapel Hill.

Previously, institutions in the 17-campus UNC System allowed lawyers to attend hearings only when a student was also being tried in criminal court, and only to advise. (Most universities operate this way, or do not permit lawyers at all.) So a lawyer might whisper or pass a note to a student being questioned, but he or she could not [redacted]eak on the student's behalf.

[redacted]te: The above paragraph has been updated from an earlier version.)

Officials worry that changing the rules will drag out the length of proceedings -- by who knows how long, if attorneys are able to do things like motion for stays -- and hike up the cost. (Other questions student affairs

officials are asking: In a sexual assault hearing, if the accused student can afford to lawyer up but the accuser can't, will the university be compelled to provide an attorney? And will campuses have to bring in their own lawyer to represent themselves in each case?)

Part of the problem is that the legislation does not define terms like "representation" and "fully participate," so the extent to which lawyers will be able to participate in proceedings is unclear, officials say.

"From a system perspective, that immediately raises questions," said Thomas Shanahan, interim general counsel at the UNC System. "When the General Assembly adopts legislation, we look to implement it and comply with it to the best of our ability, and the first step, of course, is saying what does this mean and what do the terms mean and how will that work with our processes."

However, some civil liberties advocates, such as the Foundation for Individual Rights in Education, which worked with legislators to get the bill passed, say the new law is crucial to ensure students receive due process in hearings that could make or break their academic future. Though it's uncommon, students can be expelled when found responsible for certain conduct violations.

FIRE has seen "case after case" where students were not awarded due process, universities did not follow their own rules during hearings, and students were otherwise denied their Constitutional rights, Senior Vice President Robert L. Shibley said.

UNC at Chapel Hill has been the subject of one of the most high-profile federal complaints by students who alleged the university violated Title IX of the Education Amendments of 1972 by not following appropriate procedures when hearing sexual assault cases.

"It's a real plus for student rights," he said. "To the extent that universities are now on notice that they're going to have to follow all the rules, that's a good thing."

If a non-college student would face a felony charge in court for a crime of the same nature as the one a student allegedly committed, Shibley says, that student should be afforded the same legal representation. Particularly for first-generation students or those from underprivileged families, he said, protecting and standing up for oneself in front of a bunch of administrators and professors is a difficult and intimidating prospect.

Even with the legislation's provision allowing students to opt for a "nonattorney advocate" if, for example, they can't afford to pony up for a lawyer, it also opens up the door to the most affluent students essentially paying their way out of responsibility, officials said.

"Whoever's able to hire the best and most expensive attorney is likely to win the day," said Chris Loschiavo, president of the Association for Student Conduct Administration and director of student conduct and conflict resolution at the University of Florida. "It raises lots of potential questions and problems and it makes what is an educational and administrative process now into a quasi-courtroom."

Regardless, public North Carolina campuses are now working on revising their conduct codes and related procedures to reflect the students' new right. The UNC System on Friday distributed an advisory on what the law means and how to write it into campus policies.

Hopefully, UNC at Greensboro interim university counsel Imogene Cathy said, that guidance will help campuses keep attorney interference to a minimum.

"I think lawyers who don't know about the higher education setting," she said, "don't appreciate the difference that it's not a legal proceeding. They think everything is a legal proceeding."

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Fall 2013 and Spring 2014 Student Disiplinary Data

	BSC	DCB	DSU	LRSC	MaSU	MiSU	NDSCS	NDSU	UND	VCSU	WSC	TOTALS
Conduct Reports/Complaints Received	114	71	121	14	36	165	not provided	1328	1213	11	50	3123
Judicial/Conduct Hearings	9	30	67	14	21	53	190	1245	1083	11	34	2757
Alcohol	6	14	34	8	16	49	150	945	634	10	33	1899
Other Drugs	0	6	3	2	2	2	3	74	81	0	0	173
Violence	0	5	0	0	1	1	13	15	6	1	3	45
Sexual Misconduct	0	1	0	0	1	0	0	3	2	0	1	8
Property Damage	0	0	3	4	1	1	22	0	9	0	1	41
Other	3	0	0	0	0	0	0	0	0	0	0	3
Suspensions	0	5	0	0	0	1	2	3	9	1	0	21
Expulsions	0	2	0	0	0	3	0	0	NA	0	0	5

5 - "all from housing" 2013 Calendar Yr

LRSC - Request was made for them to work on pulling their spring 2014 data and provide it as soon as they can, so that we have consistent data. I stated that we would use the 2013 in the meantime
WSC - Request made for fall 2014 data
UND- does not have expulsion as a sanction for students per its Code of Student Life

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#2
SB 2150
2-17-15

#1
SB2150
3-23-15

SB 2150 Due Process for students

Chief Justice Gerald VandeWalle, State of the Judiciary presentation, January 7, 2015

Most of us learned, or should have learned in school, that in 1215 at Runnymede near Windsor Castle, King John of England sat under a tree and signed the Magna Carta, the Great Charter. That document is the foundation of Constitutional rights and liberties and is the foundation of law that the entire court system of the United States relies on even today.

Among the principles laid out in the document is the concept of due process. Due process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including the right to fair hearing before a fair and impartial court with the power to decide the case. It encompasses the principle that the state must respect all of the legal rights that are owed to a person. It is a constitutional guarantee that all legal proceedings will be fair and that the application of laws will not be unreasonable, arbitrary or capricious.

FOR SB 2150 Due Process for College Students & Student Organizations

TO: Members of House Judiciary Committee

I am unable to be at the hearing on Monday. Please accept this testimony in support of SB 2150

1. **There is nothing worse in life than being falsely accused**... other than being punished when innocent. That often happens ***when due process is denied*** such as on college campuses esp. when attorneys are denied engagement in campus hearings to ensure due process. *Some power needs to be granted to the powerless* (the students) to stop innocent young people from being suspended, expelled, sanctioned or falsely punished.

2. The North Dakota legislation is modeled after a **North Carolina law** approved in 2013, the first of its kind in the nation which has worked well for nearly 2 years. **North Dakota would become the second state** to let students and student organizations engage an attorney when they are accused of non-academic infractions.

3. The legislation is too late for **Caleb Warner of Fargo**, whose wrongful treatment at the hands of UND administrators is all too typical. Had it not been for a brave mother we would not know the ugly details of him being falsely accused of rape and expelled at a campus disciplinary proceeding despite the police declaring him innocent and putting out a warrant out for the arrest of his accuser for filing a false police report. It took nearly *2 years* to get the expulsion repealed following *repeated requests* for a rehearing plus lots of pressure from his mother, alumni, the Wall Street Journal and national organizations. His innocent life was ruined, and he suffers from the ongoing damage to his reputation on the Internet. Who helps the other students who are falsely accused and punished?

4. I am a long-term advisor for many UND students and student groups, and ***innocent* students are punished every month**, under the guise of controlling students' behavior – making an example of some – even innocents - so others will know they could be next. College administrators have become too punitive and controlling....often trying to project the illusion of due process, but it is *not due process.*

5. A hearing before an **impartial fact-finder and decision-maker is essential to due process**, but University disciplinary hearings are *not impartial*. The prosecutor and the judge are often the same person, or report to the same person, and appeals are made to the same decision makers, who see students as a threat to their control. Interesting how they reject all appeals and think they never make a mistake. They often presume and claim a student is guilty as they did Caleb Warner, long after other wiser people know better. The administrator's primary loyalty - financially, personally and legally - is to the university *NOT the student.* That is why attorney's must be present, as too many administrators have a bias, conflict of interest, and have predetermined the outcome of the case – or their superiors have – *against the student.*

6. Like the North Carolina law, the **appeal process is essential** and legal counsel needs be present. Unfortunately, students and student organizations need to be able to prove their innocence – even if no citizen or organization should have to prove their innocence, but college students do. Thus the students need to be allowed to appeal for any reason, but especially if due process was denied, contradictory evidence was ignored, or there is

new evidence from any source including the police or courts who determine the student innocent.

7. Remember the **Kangaroo court** at the **University of Virginia** after the Rolling Stone article in October. University administrators were quick to condemn and punish innocent members of a fraternity for months, which then were subject to mob rule because these false charges were everywhere in the media. Plus sanctions were placed on ALL fraternities for months i.e. punish lots more innocent students – with still no apology, no admission of wrong doing, or making things right. This kangaroo court atmosphere is all too prevalent on campuses because of the lack of due process and legal oversight. Innocent students and innocent student organization are punished often, under the guise of controlling behavior. *But punishing innocent people is wrong – **always**.*

8. **It is very important to include student organizations.** Many innocent student organizations are punished, esp. fraternities. The misdeeds of one or a few members of an organization do NOT justify disciplinary action against the entire association and all of its members – unless the organization sanctioned and approved of the action of those few. For such a collective punishment to be just, the group *in its totality* should have shared a criminal intent or conspired in the commission or cover-up of a crime. **The First Amendment's protection of *freedom of association*** must be honored, and done so *vigorously*. There should be **no guilt by association** without specific evidence that the offending members were acting in accord with the organization's practices and policies, with the formal wishes or knowledge of the members, or with the tacit approval of the organization's leadership. The First Amendment's guarantee of freedom of association would mean little if an entire group could be prosecuted, or even disbanded, because of the *unauthorized actions* of a few. We cannot hold innocent people responsible when they have no knowledge or ability to intervene. Yet there are scores and scores of cases at UND of innocent students being punished, and student groups being punished, because of the actions of a single person – with no prior knowledge of the organization or its many members. This must be stopped just as the outrageous sanctions at the University of Virginia.

9. **P*unishing the innocent* never works, and punishing the guilty is often ineffective**. College administrators punish in anger, in frustration and an attempt to control and dominate, and get instant relief from a problem. It makes the punisher feel good, but does little positive for the punished. ***Administrators do not want to do the hard work of positive modeling and educating. S***o, what has been learned? The punisher has learned next time they feel angry and frustrated that if they just punish they will feel better. The punished has learned something different - next time don't get caught, avoid the administrator at all costs, and they learn this is not a place they want to be –a hostile environment that is not about learning. Our state cannot afford to buy into negative punishment policies, negatively impacting our future talent.

Thank you for your support of SB 2150.

Bruce Gjovig
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UND Center for Innovation Foundation
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Holmberg, Ray E.

From: Holmberg, Ray E.
Sent: Sunday, January 25, 2015 7:21 AM
To: Holmberg, Ray E.
Subject: Articles on due process

USA Today

Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

(Photo: Gerry Broome, AP)

STORY HIGHLIGHTS

- **A new law will give college students in North Carolina the right to an attorney in campus courts**
- **The law is the first of its kind in the USA.**
- **The act passed through the state's House of Representatives with a landslide vote of 112-1**

North Carolina college students no longer have to worry about facing non-academic disciplinary charges from their universities without legal counsel.

On Aug. 23, Gov. Pat McCrory, a Republican, signed a statewide bill that granted students in the state the right to an attorney in campus courts. Under the Students & Administration Act, students who attend North Carolina's public universities have the right to be represented by a licensed attorney or non-attorney advocate.

The law is the first of its kind in the USA.

Though the new rules cover students and student organizations facing disciplinary charges for violating the university's code of conduct, they do not extend to students accused of academic dishonesty or at schools that have implemented a student honor court.

"Students across America are regularly tried in campus courts for serious offenses like theft, harassment and even rape," said Robert Shibley, senior vice president for the Foundation for Individual Rights in Education (FIRE), in a news release. "Being labeled a felon and kicked out by your college carries serious, life-altering consequences. Because the stakes are so high, students should have the benefit of an attorney to ensure the hearing is conducted fairly and by the rules."

FIRE, a non-profit education foundation aimed at preserving civil liberties on U.S. campuses, advocated for the legislation and worked with a bipartisan group of state legislators to put it in action. The act passed the North Carolina House of Representatives via a landslide 112-1 vote and was ultimately included in the Regulatory Reform Act of 2013, which passed the Legislature on July 26.

Joe Cohn, the legislative and policy director for FIRE, says the strong legislative support was because lawmakers recognized that denying students the right to hire lawyers in campus disciplinary hearings left them without meaningful due process.

"It is growing impossible to ignore how unfair campus disciplinary hearings have become; the accused is denied representation while the cases against them are argued by deans, administrators and sometimes lawyers with decades of experience," Cohn wrote in an e-mail to USA TODAY. "Legislators from across the political spectrum understood that the stakes in these hearings are too high to allow students to face suspensions or expulsions for non-academic disciplinary charges without legal representation."

For years, the state's K-12 students have had the right to legal representation when facing suspension or expulsion, but university policies prohibited students from having legal counsel present their case to administrators during disciplinary proceedings. Before the law, college students were allowed to rely on an attorney for advice and resources, but the students had to represent themselves and speak on their own behalf.

It is unclear how the university systems will handle the issue of students who cannot afford representation, as universities are not obligated to appoint counsel to low-income students.

Cohn is confident that low-income students will still benefit from the law, as it allows students to opt for representation by non-legal professionals to ensure that students who cannot afford a lawyer will not be left to represent themselves.

"Low-income students will (still) benefit from the right to hire attorneys because that opens up the door for the possibility of pro bono representation," Cohn wrote. "Moreover, student governments

could use some of their considerable funding to contract with local attorneys to meet students' need for representation."

Cohn hopes college students nationwide will soon be offered this same right. He says student access to legal representation will help level the playing field, as there are many students who may not be familiar with legal terms, leaving them unprepared for a courtroom proceeding.

"Hopefully, universities will welcome this law's passage and realize that fair processes benefit everyone," Cohn wrote. "Attorney involvement will help result in fair, reliable hearings procedures that follow a standardized set of rules, and that will benefit all parties involved."

Inside Higher Education

Students Lawyer Up

August 26, 2013

Allie Grasgreen

Campus officials like to say that student disciplinary hearings are not court proceedings. There is no such thing as a finding of guilt -- only "responsibility" -- and even in the most serious cases where students are suspended or expelled, they say, the purpose is more to teach good citizenship than it is to punish wrong behavior.

Which is why a new law in North Carolina, the first of its kind, has them worried. The legislation, signed into law on Friday, guarantees any student at a public institution in the state the right to legal representation, at the student's expense, during campus judiciary proceedings.

"A key component of the developmental process of responding to student misconduct is for the student to take responsibility for their own behavior and to learn from the incident," said Bill Haggard, vice chancellor for student affairs at the University of North Carolina at Asheville. "Part of that learning experience is being able to speak on their own behalf, take responsibility for their own behaviors and engage in a conversation about changing their behavior in the future."

That will be a whole lot less likely, officials say, if students have a lawyer speaking for them.

"It's obviously something that most student affairs professionals are not that crazy about," Haggard said.

The law includes an exemption for academic charges such as plagiarism and for hearings where the panel issuing judgment is entirely student-run, as is usually the case at the University of North Carolina at Chapel Hill.

Previously, institutions in the 17-campus UNC System allowed lawyers to attend hearings only when a student was also being tried in criminal court, and only to advise. (Most universities operate this way, or do not permit lawyers at all.) So a lawyer might whisper or pass a note to a student being questioned, but he or she could not speak on the student's behalf.

(Note: The above paragraph has been updated from an earlier version.)

Officials worry that changing the rules will drag out the length of proceedings -- by who knows how long, if attorneys are able to do things like motion for stays -- and hike up the cost. (Other questions student affairs

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officials are asking: In a sexual assault hearing, if the accused student can afford to lawyer up but the accuser can't, will the university be compelled to provide an attorney? And will campuses have to bring in their own lawyer to represent themselves in each case?)

Part of the problem is that the legislation does not define terms like "representation" and "fully participate," so extent to which lawyers will be able to participate in proceedings is unclear, officials say.

"From a system perspective, that immediately raises questions," said Thomas Shanahan, interim general counsel at the UNC System. "When the General Assembly adopts legislation, we look to implement it and comply with it to the best of our ability, and the first step, of course, is saying what does this mean and what do the terms mean and how will that work with our processes."

However, some civil liberties advocates, such as the Foundation for Individual Rights in Education, which worked with legislators to get the bill passed, say the new law is crucial to ensure students receive due process in hearings that could make or break their academic future. Though it's uncommon, students can be expelled when found responsible for certain conduct violations.

FIRE has seen "case after case" where students were not awarded due process, universities did not follow their own rules during hearings, and students were otherwise denied their Constitutional rights, Senior Vice President Robert L. Shibley said.

UNC at Chapel Hill has been the subject of one of the most high-profile federal complaints by students who alleged the university violated Title IX of the Education Amendments of 1972 by not following appropriate procedures when hearing sexual assault cases.

"It's a real plus for student rights," he said. "To the extent that universities are now on notice that they're going to have to follow all the rules, that's a good thing."

If a non-college student would face a felony charge in court for a crime of the same nature as the one a student allegedly committed, Shibley says, that student should be afforded the same legal representation. Particularly for first-generation students or those from underprivileged families, he said, protecting and standing up for oneself in front of a bunch of administrators and professors is a difficult and intimidating prospect.

Even with the legislation's provision allowing students to opt for a "nonattorney advocate" if, for example, they can't afford to pony up for a lawyer, it also opens up the door to the most affluent students essentially paying their way out of responsibility, officials said.

"Whoever's able to hire the best and most expensive attorney is likely to win the day," said Chris Loschiavo, president of the Association for Student Conduct Administration and director of student conduct and conflict resolution at the University of Florida. "It raises lots of potential questions and problems and it makes what is an educational and administrative process now into a quasi-courtroom."

Regardless, public North Carolina campuses are now working on revising their conduct codes and related procedures to reflect the students' new right. The UNC System on Friday distributed an advisory on what the law means and how to write it into campus policies.

Hopefully, UNC at Greensboro interim university counsel Imogene Cathy said, that guidance will help campuses keep attorney interference to a minimum.

"I think lawyers who don't know about the higher education setting," she said, "don't appreciate the difference that it's not a legal proceeding. They think everything is a legal proceeding."

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Punishment First, Trial Later, or Never: The Education Department's Investigation of Tufts University [1]

Submitted by Hans Bader on Wed, 2014-05-21 15:08

Imagine if you could be expelled from your dorm, or a class, just because someone accused you of something -- even if the accusation was so weak or thinly-grounded that it never even led to a disciplinary hearing against you, or the complainant was unwilling to even let you have the opportunity to clear your name. Such "interim measures" by colleges seem to be what the Education Department recently required of Tufts University in Massachusetts, as a condition of settling a Title IX investigation against it after it found a student *not* guilty of sexually assaulting a classmate who denied those charges, after he convinced it that the complainant was not credible and had clearly lied about her medical history. If Tufts didn't agree to the settlement, the Education Department could have cut off all federal funds to the University -- millions of dollars -- and all federal financial aid to its students could have been terminated. So the settlement was not exactly voluntary. (Tufts tried [2] to back out of the settlement, but knuckled under [3] due to adverse publicity and the risk of huge financial losses.)

The Education Department's demands violate due process rights. Although Tufts is a private university, the government cannot *force* a private institution to take an action that would constitute a due process violation if engaged in by a government institution. *See Merritt v. Mackey* (1987).

The settlement [4], on page 9, paragraph 15, requires an "an explicit assurance that the University provide interim measures during the course of a complaint, or a university-initiated investigation; an explicit statement that interim measures are available *even if the complainant does not file or continue to pursue a complaint*." But taking "measures" against someone can violate due process even when the measures are not criminal and designed to protect the complainant rather than harm the accused, especially when the measures are not brief and limited to the time needed for a prompt hearing on whether the accused really is guilty or innocent. (For example, in *Sacharow v. Sacharow [5]*, the New Jersey Supreme Court ruled that a father accused of domestic violence had a right to defend himself before his ex-wife was put into the Address Confidentiality Program, which would have made it more

difficult for him to maintain his relationship with his child. In *Tyree v. Evans [6]*, the D.C. Court of Appeals ruled that a man was entitled not only to the opportunity to defend himself against domestic violence charges before a year-long restraining order could be granted to his accuser, but also the ability to cross-examine her.)

What are these "interim measures" the Education Department speaks of? As explained below, it includes things like excluding the accused from a classroom or dorm he shares with the accuser. So applying such interim measures *even if the complainant does not file or continue to pursue a complaint* could result in them continuing indefinitely, and could result in the accused being excluded from classes or dormitories without ever having any opportunity to defend himself, in blatant violation of the Constitution's due process clause.

Disturbingly, the Education Department's Letter of Findings never even discussed the possibility that the accused student might be innocent, as the university fact-finder found, even as it asserted [7], without any analysis of the evidence, that the lack of measures against the accused "resulted in the continuation of a sexually hostile environment for the Student." (pg. 23). Instead, it complained [7] that the university allowed in potentially exculpatory evidence, rather than rigidly applying deadlines or exclusionary rules, writing that "The University allowed consideration of the Student's medical history, contrary to the applicable policies, even after the Accused was found to have obtained the Student's confidential medical information by misrepresenting himself as a University medical student; and the University repeatedly modified existing procedures in a manner that benefited the Accused, including by allowing the Accused to submit an Addendum to his response on July 28, 2011, and allowing him to include details of the Student's sexual history" (pp. 21-22). The way the accused obtained the complainant's medical information would certainly be a basis for disciplining him for invasion of privacy, but not for finding sexual harassment, much less blaming the college (or finding a Title IX violation), since if the accused was innocent of sexual harassment and assault, he by definition can't have created a "sexually hostile environment" for her.

The Education Department's settlement with Tufts is even worse. It requires Tufts to revisit all past disciplinary proceedings through 2011, which could lead to punishment of someone previously found not guilty (double jeopardy in all but name); it promotes anonymous investigations; and it approves changes to Tufts' harassment policy requiring "a statement that the alleged misconduct does not have to be 'directed at' a specific person or persons to constitute harassment" which means consensual speech between students can be banned as harassment when it is overheard by a third party who disagrees with it (raising serious First Amendment problems under court rulings like *Rodriguez v. Maricopa Community College [8]*, which ruled that academic speech can't be banned as harassment when it is not aimed at the complainant). *See Voluntary Resolution Agreement [4]*, Tufts University, Complaint No. 01-10-2089, at p. 16 (reopen past investigations and complaints), p. 6 (need not be "directed at" complainant), p. 9, paragraph 15 (anonymous complaints).

The interim measures that the Education Department demands have serious due process consequences for accused people. (Under pressure from its Office for Civil Rights, colleges

are now routinely expelling students who are very likely innocent of sexual harassment or assault, see here [9], here [10], here [11], here [12], here [13], here [14], and here [15].)

As the Education Department explains on pp. 21-22 of its letter of findings [7] regarding Tufts, declaring it to have violated Title IX:

> The University also failed to provide the Student with effective interim measures during the eighteen months that followed her January 2010 report that she had been sexually assaulted. While the University issued a stay-away order to prevent the Student and the Accused from communicating with each other, the University's policies and procedures at the time did not include any mechanism to enforce physical separation of students unless/until there was an actual finding in a case or a court order required separation. The Student therefore obtained a court-ordered restraining order in February 2010 that the University enforced in the residence hall by requiring the Accused to move out of the residence hall and allowing the Student and the Accused to alternate attendance at the Program's weekly seminar. After this restraining order was vacated, the University initially required the Student to attend weekly Program seminars for the Fall semester together with the Accused or risk expulsion from the Program, and then permitted her to miss the seminars altogether without penalty, which resulted in her not attending any Program seminars in the 2010-11 academic year. Furthermore, the University did not inform the Student that she could request to move out of her residence hall for several months after she isolated in her residence hall room in the first part of 2010 until the Accused was required to move out of the residence hall and also reported being harassed by other students. Because of the arrangements made by the University, the Student was denied the opportunity to attend and participate fully with other students in the Program seminar, first when she alternated attendance at the seminar with the Accused in the Spring 2010 and then when she did not attend the seminars in person at all in the Fall 2011. In both instances, the University's response deprived the Student of educational benefits offered to other Program students. Moreover, because of her continued concerns about not feeling safe on campus, the Student accelerated her education and graduated a year early. . . .
>
> The Student was thus exposed to close physical proximity to the Accused and to harassment in the residence hall for several months. . .The interim measures provided by the University deprived the Student of an equal opportunity to participate with other students in the Program by first alternating her attendance at the weekly seminars with the Accused and then making arrangements in the Fall 2010 under which she did not participate at all in the seminars. . .The University's failure to provide effective interim protective measures for the Student and, instead, placing the burden of interim measures largely on the Student was contrary to the requirements of Title IX to provide effective interim measures that minimize the burden on complainants of sexual harassment/violence.

See Letter from Thomas J. Hibino, Director, Region 1, Office for Civil Rights, U.S. Department of Education, to President Anthony P. Monaco, President, Tufts University, re: Complaint No. 01-10-2089.

Colleges may already have had potent financial incentives to expel potentially innocent students, even without recent pressure from the Office for Civil Rights (I explained [16] earlier why the Office for Civil Rights was wrong [17] to force colleges to lower the standard [18] of evidence in campus sexual harassment and assault proceedings in its April 4, 2011 "Dear Colleague" Letter, and wrong to tell them not to allow cross-examination [19] by the accused).

For example, see this discussion [20] at Andrew Sullivan's Daily Dish:

> Not only have people successfully sued for a million dollars or more under Title IX and its sister statute, Title VI (which deals with racial harassment), as in the Zeno [21] case, but the Education Department's Office for Civil Rights does in fact effectively impose sanctions on schools even when it doesn't cut off their federal funds, since it sometimes conditions the end of the investigation on a resolution agreement that contains monetary compensation for victims.
>
> For example, Tufts recently agreed to provide "monetary compensation [2]" for a complainant, despite denying any wrongdoing, although it balked at an Education Department demand that it also declare itself in violation of Title IX: "Tufts signed an agreement with the government earlier this month, pledging to take a long list of steps in improving their policies, as well as providing monetary compensation to the student."
>
> Moreover, many seemingly-innocent students have been expelled or suspended based on meager evidence, as is evidenced by the cases cited on the web site of the Foundation for Individual Rights in Education [22], and in former Massachusetts ACLU leader Harvey Silverglate's Wall Street Journal op-ed [23] in discussing the Caleb Warner case. As I noted in the commentary below, "For examples of seemingly-innocent students expelled or suspended from school based on very weak evidence, in the aftermath of the Education Department's "Dear Colleague" letter, see here [9], here [10], here [11], here [12], here [13], here [14], and here [15]."
>
> Unfortunately, the deck is usually stacked against the accused student. School officials have every incentive to expel students if there is any chance they are guilty at all. A state university official who doesn't kick out the accused can be individually sued under decisions like *Murrell v. School District No. 1* [24] and *Fitzgerald v. Barnstable School Committee* [25]. That's in addition to the fact that the university itself can be sued under Title IX. School officials can also be sued under state sexual harassment laws that reach further than Title IX, like New Jersey's Law Against Discrimination, which provides for individual liability on the part of school officials, as well as liability based on constructive rather than actual notice.

> By contrast, a school that expels an innocent accused probably can't be sued, even if he is probably innocent, since the accused only has a right to PROCEDURAL due process, not any SUBSTANTIVE finding of guilt or innocence. So as long as the school goes through the motions of giving the accused a fair hearing, and follows its procedures, it can kick him out even if he is probably not guilty.

Note, however, that there is a division among courts as to whether public school officials can be sued individually under the Fourteenth Amendment for failing to remedy "peer harassment" (in addition to the school system itself, which obviously can be sued for failing to respond to peer harassment under Title IX). As I have explained earlier [26], individual school officials generally should *not* [27] be subject to such liability, as a *logical* matter, given the Constitution's "state-action doctrine," which results in the Fourteenth Amendment being more limited than Title IX as to peer harassment. But courts are split on this subject, with some, like the Second Circuit, broadly allowing such suits against public school teachers and administrators over racial or sexual harassment by students, while others do not, *see, e.g., Soper v. Hoben*, 194 F.3d 845 (6th Cir. 1999) (in harassment cases, equal protection claim requires discriminatory purpose, while Title IX claim requires only showing of indifference to harassment); *Morlock v. West Central Educ. Dist.*, 46 F.Supp.2d 892 (D. Minn. 1999) (same); *S.S. v. Eastern Kentucky Univ.*, 2008 WL 2596660 (6th Cir. July 2, 2008) (disability harassment); *UWM Post v. Board of Regents*, 774 F.Supp. 1163 (E.D. Wis. 1991) (Equal Protection Clause requires showing that agent of college, not student, engaged in harassment).

Although private colleges are not regulated by the Constitution, the Education Department cannot *force* them to discipline students in ways that would violate the First Amendment or due process guarantees if they were at a state college. The government cannot force a private entity to do something that the government cannot itself do directly. *See, e.g., Merritt v. Mackey*, 827 F.2d 1368 (9th Cir.1987) (due process); *Okwedy v. Molinari*, 333 F.3d 339 (2d Cir. 2003) (free speech); *Rattner v. Netburn*, 930 F.2d 204 (2d Cir. 1991) (free speech); *Truax v. Raich*, 239 U.S. 33, 38 (1915) (equal protection).

Issues:
Law and Constitution [28]
Risk and Consumer Freedom [29]

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[15] http://www.mindingthecampus.com/originals/2013/08/suing_over_star_chamber_hearin.html
[16] http://www.examiner.com/article/no-ocr-s-april-4-2011-dear-colleague-letter-is-not-entitled-to-deference
[17] http://www.examiner.com/article/education-department-illegally-ordered-colleges-to-reduce-due-process-safeguards
[18] http://collegeinsurrection.com/2012/09/education-dept-unlawfully-changes-burden-of-proof-in-college-sexual-harassment-cases/
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[21] http://www.wrightslaw.com/law/caselaw/2012/2d.zeno.pine.sch.damage.harrass.pdf
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[26] http://www.openmarket.org/2008/11/24/fitzgerald-v-barnstable-school-committee-school-board-virtually-concedes-vast-new-liability/
[27] http://www.openmarket.org/2008/07/22/fitzgerald-v-barnstable-school-committee-a-stealth-assault-on-the-state-action-doctrine/
[28] https://cei.org/issues/law-and-constitution
[29] https://cei.org/issues/risk-and-consumer-freedom

#2
SB2150
3-23-15

15.0596.03000

FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2150

Introduced by

Senators Holmberg, Armstrong, Casper

Representatives Delmore, M. Johnson, Larson

A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Disciplinary proceedings - Right to counsel for students and organizations - Appeals.

1. Any student enrolled at an institution under the control of the state board of higher education has the right to be represented, at the student's expense, by the student's choice of either an attorney or a nonattorney 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 ~~disciplinary~~ rules or policies. This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion from the institution. This right does not apply to matters involving academic misconduct.

Comment [JC1]: OK

2. Any student organization officially recognized by an institution under the control of the state board of higher education has the right to be represented, at the student organization's expense, by the student organization's choice of either an attorney or nonattorney advocate, who may fully participate during any disciplinary ~~procedure~~ proceeding or during any other procedure adopted and used by the institution to address an alleged violation of the institution's rules or policies. This right only applies if the disciplinary proceeding involves a violation that could result in the suspension or the removal of the student organization from the institution.

Comment [JC2]: OK

Comment [JC3]: OK

3. a. Any student who is suspended or expelled from an institution under the control of the state board of higher education for a violation of the ~~disciplinary or conduct~~ rules or policies of that institution and any student organization that is found to be in violation of the ~~disciplinary or conduct~~ rules or policies of that institution ~~may~~ must be afforded an opportunity to appeal the institution's decision to the same institutional body that conducted the original proceeding for a period of one year after receiving final notice of the institution's decision.

b. ~~The student or a student organization must file the appeal no later than one year after the day the student or the student organization receives final notice of discipline from the institution.~~ The right of the student or the student organization under subsection 1 or 2 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 to the appeal.

c. ~~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~~ The appeal must be based on new evidence or on grounds that due process was not afforded to the student or student organization, and may also include consideration of other documentary information, such as police reports~~,~~ and transcripts~~, and the outcome of~~ from any civil or criminal proceeding directly related to the appeal~~.~~, and the outcome of any such civil or criminal proceedings.

4. ~~Upon consideration of the evidence, the~~ The institutional body considering the appeal shall review the evidence and documentary information and may ~~grant the appeal, deny the appeal, order a new hearing, or reduce or modify the suspension or expulsion.~~ affirm the original decision, modify the sanction, or require a new hearing on the matter. ~~In any successful appeal brought under subsection 3,~~ If the appeal or new hearing results in a lessening of the sanction, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which ~~had~~ have not been previously refunded.

5. Nothing herein precludes an institution from affording an immediate appeal process of the initial decision to an institutional administrator or body who did not make the initial decision, on grounds as specified by the institution.

Comment [JC4]: OK

Comment [JC5]: OK

Comment [JC6]: OK

Comment [JC7]: OK and also OK if NDUS wants to extend period.

Comment [JC8]: Deny. Do not want burden shifting. Institution should grant and hear the appeal. If institution is going to consider the evidence to make a determination on having an appeal might as well just grant it.

Comment [JC9]: Deny

Comment [JC10]: OK, so long as they are granted the opportunity to appeal.

Comment [JC11]: OK

Comment [JC12]: Deny

Comment [JC13]: OK

6. Nothing herein affects the obligations of an institution to provide equivalent rights to a student who is the complainant or victim in the disciplinary proceeding hereunder.

#3
SB2150
3-23-15

Good Morning Chairman Koppelman, Vice Chair Karls and members of the House Judiciary Committee. Thank you for the opportunity to speak this morning.

My name is Sherry Warner Seefeld. I am a social science teacher at Fargo Davies High school and also resident of Families Advocating for Campus Equality, a national non-profit organization, but today I am speaking to you as a mother.

Sexual assault is a horrific crime and we all must make every effort possible to prevent such assaults from happening. I feel heartened by the implementation of much needed educational programming aimed at the prevention of sexual assault on college campuses as this is one of the goals of my non-profit organization. As concerned members of our communities, all of us can strive to do a better job of supporting, discussing and promoting such interventions, not just on campuses but across all segments of society.

However, in the zeal to make campuses safe for all students there has emerged a disturbing trend which has, in fact, made colleges and universities decidedly unsafe for a group of students who are currently denied basic civil rights, those accused of sexual assault. Americans have constitutionally guaranteed protections from an overzealous government – an assumption of innocence until proven guilty, the right to counsel, the right to not self-incriminate, the right to present witnesses and evidence, the right to cross-examine, the right to appeal, and freedom from double-jeopardy to name a few. Most of these rights currently do not exist on college campuses for those accused of serious crimes.

As citizens of the US we do not have to believe there are large numbers of false accusations in order to insist that the process used to determine guilt or innocence be fair. After all, stigma of the very accusation of sexual assault may remain with a person for the rest of their life.

All of us want to protect our young people from sexual assault, however, students on today's campuses are immersed in a rape hysteria which is eerily similar to the hysteria of McCarthyism – with a simple statement made by one person, another person finds themselves facing an assumption of guilt and trying to prove their innocence in a system stacked against them. Whipped up by oft repeated statistics derived from unreliable research studies which have been thoroughly discredited, some administrators, faculty and students have been quick to rush to judgment on sexual assault accusations.

Information from the Bureau of Justice and the FBI show rates of rape and other types of sexual assault in the US are at the lowest ever and continue to go down. (Please help eradicate the 1 in 5 statistic. It is patently false. According to the Bureau of Justice Statistics report released December 2014 the rate is 0.061% or 0.03 in 5) I want emphasize that my goal is to see these numbers continue to go down, but not at the expense of the well-being of other students. Two wrongs do not make a right.

Despite the statistics provided by the DOJ, colleges and universities are facing enormous pressure from federal and state entities as well as from some community members, to be tougher on sexual assault cases. The fastest and easiest way to show compliance with this expectation is by expelling students accused of sexual assault. As a result thousands of students have been found guilty on mere accusations and not on evidence gathered through an investigation. I know this because I work with families, victims, and their attorneys every single day.

It is in this over-charged emotional atmosphere both claimants and respondents must traverse the university disciplinary hearing process. All students deserve to have counsel, if they so choose, by their side to help them navigate a very complex system which has potential implications for criminal justice proceedings and for their future.

I would like to share with you a little about my son Caleb's experience which may illustrate the importance of SB2150, a bill which would allow a student the right to an attorney who can actively participate in the hearing process when a student has been accused of a serious crime.

When Caleb was called to Dean Jeffrey Powell's office on January 27, 2010, he was asked to provide an oral and written account of his relationship with the complainant. Dean Powell engaged in investigatory questioning of Caleb while keeping his own personal notes. At no time was Caleb told that he could have an attorney with him nor that everything he said could be used to prosecute him in a court of law. In fact, it was quite the opposite. Dean Powell assured Caleb that the University looked at him equally as a student of UND and deserving of their protection. Dean Powell also assured Caleb that a thorough investigation would be conducted in order to get to the truth.

Caleb, who knew there was more than ample evidence and witnesses who could substantiate his own story and negate all aspects of the complainant's story, left the Dean's office "knowing" everything would be straightened out. In fact, that evening when he called to tell me this meeting had happened he reassured me he did not need an attorney. He truly believed in his university, that there was some mistake and everything would be straightened out. Truth always wins, right?

What he and I did not understand at that time was that Dean Powell was both the investigator and the prosecutor and there really wasn't going to be much of an investigation and Caleb's fate was already sealed. My instincts told me we needed an attorney to protect Caleb's rights and I retained someone who, from that point forward, communicated with UND on Caleb's behalf.

Three days later, after the "supposed" thorough investigation, (in which none of Caleb's witnesses were contacted nor was any of his evidence reviewed) Caleb was notified there would be a disciplinary hearing on February 11 and he was assigned a university advisor to help him understand the hearing process. Caleb was told he could have his attorney present but that his attorney could not speak or in any way participate in the hearing. If any member of the UND "hearing team" determined that Caleb's attorney was violating this stipulation he would be removed from the room.

Let's just think about that for a minute – A 23-year old had to defend himself against an accusation which in the criminal justice system is a felony and has mandatory prison time attached, with only 11 days of preparation, in a recorded hearing where anything he said could be used against him in a criminal court should the accusation be taken further. Two days before the hearing the complainant did file a police report with the Grand Forks police so this was a serious legal concern.

Let's fast forward to the hearing. The following people were in the room

Caleb, his attorney, and the assigned university **advisor**.

A hearing panel composed of 3 students and 3 faculty members

Four witnesses for Caleb who appeared one-by-one. (The complainant did not present any witnesses nor any additional evidence.)

Director of the Woman's Center Kay Mendick – who sat next to the complainant holding her hand, hugging and patting her throughout the hearing, thus non-verbally providing a strong message to those in the room.

Dean Jeffrey Powell – investigator and now prosecutor, with years of experience in this role in disciplinary hearings.

Julie Ann Evans – General Counsel for UND – who not only participated in the hearing in an adversarial way, but also badgered all of his witnesses. Additionally she controlled the narrative of the proceedings by making judgmental statements and expressing her opinions. One example of this is when she asked each of Caleb's witnesses if he was a fraternity brother and then proclaimed to all in the room "We all know fraternity brothers lie for each other" thus dismissing their testimony.

Ms. Evans also actively badgered Caleb by stridently objecting to his questions of the claimant. For example, Ms. Evans loudly carried on about relevance when Caleb asked the complainant "Do you know what 911 is for?" This seems like a logical question to ask someone who voluntarily admitted in her pre-hearing statement she had access to and used her phone during the entire time of the alleged assault.

These frequent and antagonistic objections seem especially unnecessary because the complainant had a choice of whether or not to answer any and all questions by simply shaking her head when she didn't want to answer a question.

The rest of the story is probably well known to many of you. By a Preponderance of Evidence Standard, (not federally mandated at that time) the hearing panel found it was at least 50.01% more likely the complainant's story was true than Caleb's and he was immediately expelled. He was told not to step foot on campus or he would be arrested. His academic career was essentially over.

He was given five days in which to ask for an appeal, but only if there was substantial new evidence. After five days no appeal would be granted.

In order to prepare for a potential court case Caleb's attorney requested a copy of either the audio recording or a redacted transcript. This request was denied. To this date neither has ever been provided.

Three months later, after a police investigation concluded, the Grand Forks district attorney issued a warrant for the complainant's arrest for filing a false police report. The young woman fled the state.

It took an additional year and a half of efforts by attorneys, alumni, FIRE, represented here today by Joe Cohn, media, and myself before UND would vacate the sanctions because, as Ms. Evans insisted in one letter, "there really wasn't any new evidence." This is an incredulous statement considering the detective had actually mpleted a thorough investigation and interviewed several additional witnesses, including the complainant's oyfriend and other friends (hers and his) who supported Caleb's story.

Some people say it is okay to expel students for accusations of sexual assault or rape, reasoning that there is no loss of liberty and that the university hearing is an educational process. However the stigma of even an accusation is enough to cause harm for a lifetime. In my work with Families Advocating for Campus Equality, I have found that these young people have a very, very difficult time finding a college which will admit them to finish their degrees. I know of some cases where a college has rescinded their acceptance upon finding out about previous accusations through the college "grapevine." Employment and careers are impacted. PTSD, depression, suicide attempts, and other symptoms of emotional and psychological trauma are apparent in most victims.

Punishing innocent people is traumatically destructive and is poor policy which does damage not only to those falsely accused but also to also to true victims of rape. Society has a vested interest in creating fair and just processes for determining guilt or innocence on such important accusations. It is a slippery slope when a people deem it okay to fall back into feudal-like justice systems where select groups have the power to accuse and convict any who they name. Students deserve counsel who may actively participate in disciplinary hearings to protect them in situations where they face such a life altering accusation.

Please don't let cost or inconvenience be a reason to throw away lives. My son's life and the lives of all our students are worth the effort to get it right.

I strongly urge you to support SB2150. Constitutional rights should not disappear when a student steps o a college campus.

Sherry Warner Seefeld

45,100 /2 = 22,550/5=4,510 2013-2014 – 3123 complaints, 2757 hrings, 1899 alcohol (69%), 1.6% violence, 8 sexual misconduct

#4
SB2150
3-23-15

NORTH DAKOTA UNIVERSITY SYSTEM

ACCESS. INNOVATION. EXCELLENCE.

Policies and Procedures

SBHE Policies

<< return

SUBJECT: 500s: Student Affairs **EFFECTIVE:** August 1, 2014

Section: 514 Due Process Requirements

THIS POLICY DOES NOT BECOME EFFECTIVE UNTIL AUGUST 1, 2014.

1. Each campus will establish its own student disciplinary procedures.
2. Minimum Requirements: Each campus's student disciplinary procedures involving suspension or expulsion will include, at a minimum, the following elements.
    a. Adequate Notice: Any student accused of violating campus policies will receive adequate notice of the alleged violation.
        1. In order for the notice to be adequate, the campus must identify the particular charge brought against the student.
        2. The notice must be provided to the student at least three days prior to any hearing or deadline for a response from the student.
        3. The notice requirement is waived if a student consents to having a shorter notice period.
    b. Hearing: Any student accused of violating campus policies will be entitled to a hearing with an opportunity to present his or her own defense. A student who fails to appear for a scheduled hearing will be deemed to have waived his or her right to a hearing.
3. This policy is not intended to preclude emergency removals from campus when there is a reasonable basis for believing a student poses a substantial risk of immediate physical harm to students, faculty members, or others.
4. Campuses may work with their respective student governments to develop procedural elements beyond the minimum requirements noted above, as the campuses deem appropriate and logistically feasible.

History:
New Policy, SBHE Minutes, June 20, 2013.

[Back to website]

#5
SB 2150
3-23-15

Aaron Weber
NDSU Student Government
SB 2150 Testimony

Chairman Koppelman, members of the committee, for the record my name is Aaron Weber, Executive of Governmental Relations for North Dakota State University Student Government. Today I am here representing nearly 15,000 students of NDSU. I am here to voice our support for SB 2150.

SB 2150 as amended would allow students or student organizations facing expulsion or suspension from an NDUS institution the right to have counsel active and participating in their conduct hearing. It is currently NDUS policy that students are afforded the right to have counsel present, but they not allowed to participate in the hearing. The bill also makes an appeal for each student a matter of right, rather than it being contingent on the institution's discretion.

While the bill allows for an attorney to be present and participating in conduct hearings, it does not require the institution to provide counsel should a student not be able to afford it. To that same point, should a student not be able to afford counsel, a non-attorney advocate can still represent them.

The point needs to be clear that mistakes do happen in this process with a degree of frequency. One case in particular has received a bulk of the attention, but this is not an isolated incident. There is evidence that a lack of due process does exist at NDUS institutions at times. This is not to say that every hearing is unfair or handled poorly. This bill is to simply make sure students facing the most serious punishments receive a fair trial.

That is why we stand in support of Senate Bill 2150. The presence of an attorney or a non-attorney advocate able to participate in the hearing would be beneficial to students facing life changing allegations. NDSU Student Government has unanimously passed a resolution in support of SB 2150 and asks that you please give this piece of legislation a Do Pass. I will yield to any questions from the committee at this time.

#6
SB 2150
3-23-15

SR-20-15

A Resolution in Support of SB 2150

Whereas, NDSU currently affords students the opportunity to have an attorney present during disciplinary proceedings on campus, and

Whereas, that attorney is allowed to advise their client but is not allowed to participate in the hearing, and

Whereas, SB 2150 would allow for an attorney to be present and also participate in the hearing, and

Whereas, these proceedings can have a life changing impact on those participating, therefore be it,

Resolved, that NDSU Student Government supports the passage of SB 2150.

Respectfully submitted,

Sarah Russell
Student Body President

Hilary Haugeberg
Student Body Vice-President

Aaron Weber
Executive Commissioner of
Governmental Relations and
Intercollegiate Affairs

Megan Matejcek
Assistant Executive Commissioner of
Governmental Relations and
Intercollegiate Affairs

Josh Fergel
Chief Justice | Student Court

Mathew Warsocki
Associate Justice | Student Court

#7
SB 2150
3-23-15

Chase Johnson
UND Student Government
Support for SB 2150

Chairman Koppelman and members of the House Judiciary committee- For the record my name is Chase Johnson and I am the Governmental Affairs Commissioner for UND Student Government. Today I am here representing nearly 15,000 students, and voicing our support for Senate Bill 2150, which brings due process to college students in North Dakota.

I'd like to begin this morning with an example of illegitimate due process, which took place at UND. In January of 2010, former UND student Caleb Warner was falsely accused of sexual assault by a fellow student. Unfortunately due to UND's preponderance of evidence standard, administrators determined that Caleb had violated the Code of Student Life and needed to be suspended. After a three month investigation, the police and courts issued a warrant for Caleb's accusers arrest due to filing a false report, thus crediting Caleb's innocence. But UND did not see it this way, his suspension continued, and UND refused multiple requests to have a rehearing.

The point needs to be clear that these types of mistakes are happening all of the time. There is a severe lack of due process at NDUS institutions. Students are being punished based off of little evidence, and organizations are demoralized with false accusations affecting their reputations for years to come. Furthermore, student organizations have the same due process rights as students, creating an unfair environment where the actions of a few can demolish legitimate organizations that have benefited the campus for decades. Therefore, it is important that both students and student organizations are afforded these due process rights. There is a stark problem on North Dakota campuses, and Senate Bill 2150 helps to alleviate that.

That is why we stand in support of Senate Bill 2150, which would "create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education." As seen by the example we presented today, disciplinary hearings that conclude the termination of a student's enrollment at NDUS institutions are necessary, often times costing the affected student thousands of dollars and severely hindering a student's opportunity to continue in higher education. Any student that has incurred such serious punishments ought to be able to appeal that decision through the traditional legal system. Moreover, the presence of an attorney or a non-attorney counselor, with a depth of understanding regarding an institution's student conduct policy would be beneficial to students. Prohibiting college students, like Caleb, from having the right to legal representation when their reputations are on the line does not make sense. Therefore, we urge the 64th Legislative Assembly to adopt this critical piece of legislation and will yield to any questions from the committee.

#8
SB 2150
3/23/15

FIRE
Foundation for Individual Rights in Education

2013-2014 ANNUAL REPORT

FIRE at 15

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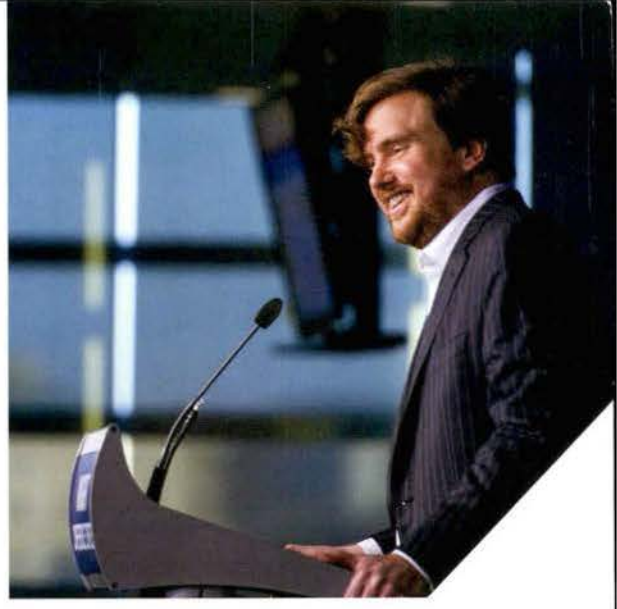


FROM THE PRESIDENT

Dear Friends,

2014 marks not only FIRE's 15th anniversary, but also one of our most exciting years yet.

Last fall, in a case unlike anything FIRE has ever seen, Modesto Junior College student Robert Van Tuinen was stopped from passing out Constitutions on Constitution Day. Fortunately, 2014 started on a high note when a settlement was reached between Robert and his school, which, sadly, continues to deny it engaged in censorship.

Soon after, FIRE was on the front lines—and front pages—for this spring's "disinvitation season," during which universities and their constituents attempted to censor some of their most high-profile commencement speakers. News outlets including CNN, FOX News, C-SPAN, MSNBC, NPR, *The Washington Post*, and *The New York Times* gave major attention to FIRE's warning against excluding speakers on campus, whether controversial or not.

Then, on July 1, FIRE announced the Stand Up For Speech Litigation Project, a bold new initiative that seeks to end the threat of campus speech codes for good. With the legal expertise of eminent First Amendment attorneys Robert Corn-Revere, Ronald London, and Lisa Zycherman of the law firm Davis Wright Tremaine, students and faculty from Ohio University, Iowa State University, Chicago State University, and Citrus College in California filed lawsuits against their schools' administrators to send the message that censorship on campus is not only unacceptable, but it is also unconstitutional. While FIRE already boasts a 100% success rate in speech code litigation, the Stand Up For Speech Litigation Project seeks to generate additional legal precedent, as well as widespread media coverage and a greater awareness of the importance of protecting the First Amendment rights of students and faculty at our public institutions of higher education. I hope that college administrators are proactive, rather than reactive, in reforming their speech policies as FIRE continues to serve as a resource to protect First Amendment rights on campus.

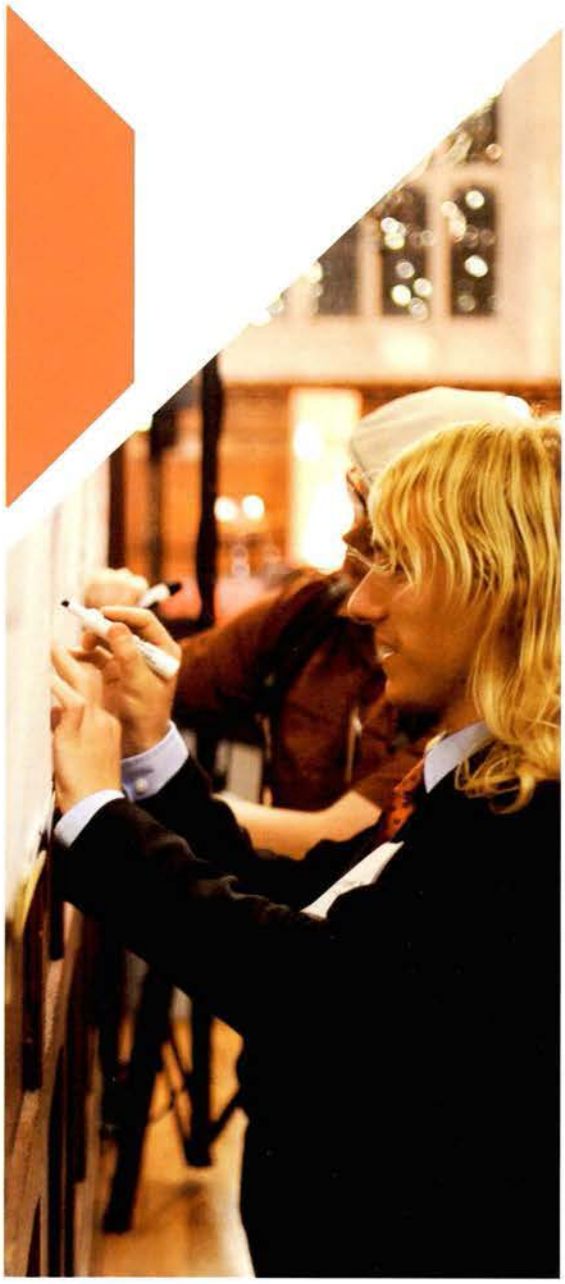
The launch—and future success—of Stand Up For Speech would not be possible without FIRE's incredibly generous and dedicated supporters. The victories we've achieved in 2014 are a testament to the commitment of our friends and allies, and we are eternally grateful for your support over the past 15 years. As we move forward into 2015, I look forward to growing together with you and celebrating our continued successes.

Yours,

GREG LUKIANOFF

DEFENDING INDIVIDUALS:
FIRE'S TOP CASES

FIRE'S INDIVIDUAL RIGHTS DEFENSE PROGRAM (IRDP) WORKED THROUGHOUT THE PAST YEAR TO DEFEND individual students, professors, and campus groups whose fundamental civil liberties have been violated. Providing assistance to targets of campus censorship through private advice and referrals, outreach to administrators, the strategic use of publicity, and, when necessary, the coordination of legal counsel and action in the courts, the IRDP successfully defended hundreds of students and faculty members at colleges and universities around the country.



In the last 12 months, FIRE received more case submissions than ever before—and we met the challenge head-on. With an expanded staff and a proven strategy, the IRDP was able to secure nine public victories at nine unique colleges and universities with a total enrollment of more than 265,000 students. FIRE also continued to refer individuals who we cannot directly help to other resources and organizations that can assist them, helping secure indirect victories in dozens of other cases. Selected highlights of FIRE's victories from the past year are described below. For more information about recent FIRE victories, visit our website at thefire.org/cases/topcases.

LOYOLA UNIVERSITY CHICAGO

In April 2014, Loyola University Chicago informed the Loyola Students For Liberty student organization that it would be required to censor a "free speech wall" the group planned to construct on campus and to remove any messages that were "grossly offensive" or "contrary to the University's Catholic, Jesuit mission and heritage." FIRE wrote a letter to Loyola reminding the university of its obligation to honor its promises of broad expressive rights on campus. After FIRE's intervention, the university backed down and the event transpired as planned, with no censorship of any material on the free speech wall. A win for free expression!

UNIVERSITY OF TEXAS AT AUSTIN

In March 2014, the UT Objectivism Society applied for $1,920 in funding from the University of Texas at Austin (UT) Events CoSponsorship Board (ECB) to support a planned on-campus debate. ECB is staffed by students and funded by UT's mandatory student activity fees. The UT Objectivism Society's request for funding was denied. When questioned about its reasons for rejecting the funding request, ECB replied only that it was

Power in Numbers

From June 30, 2013 to July 1, 2014, FIRE received

610 REQUESTS

for assistance.

In the last five years alone, FIRE has received more than

2,500

case submissions.

Since 1999, the IRDP has won

204 VICTORIES

at 150 colleges and universities with an enrollment of more than 2.4 million students.

Through such casework the IDRP has secured

61 POLICY CHANGES

at 49 colleges and universities with an enrollment of over

ONE MILLION STUDENTS.

Just six months into 2014, FIRE had already fielded submissions from nearly

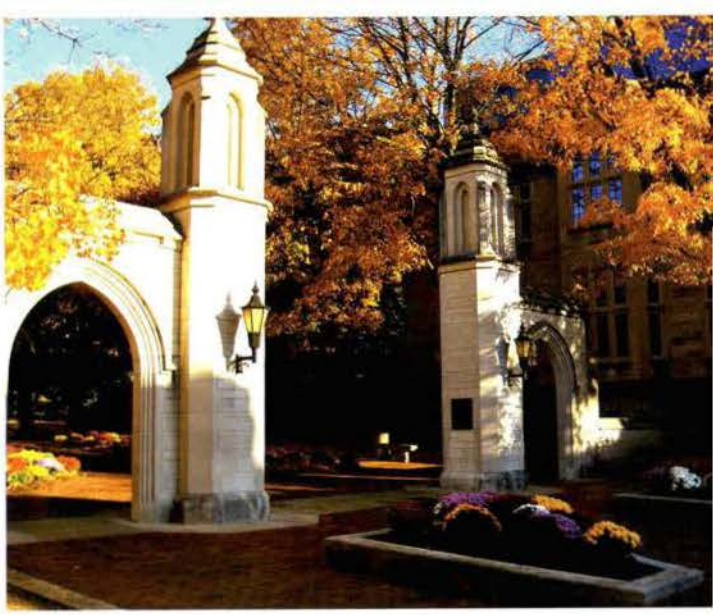
265 COLLEGES AND UNIVERSITIES

across 48 states.

"unable to disclose any information regarding the deliberation process whether or not an event was funded." After FIRE raised concerns about ECB's lack of transparency and the potential for unconstitutional, viewpoint-based discrimination, UT clarified that ECB would in the future make clear to groups its reasons for approving or denying funding.

INDIANA UNIVERSITY – BLOOMINGTON

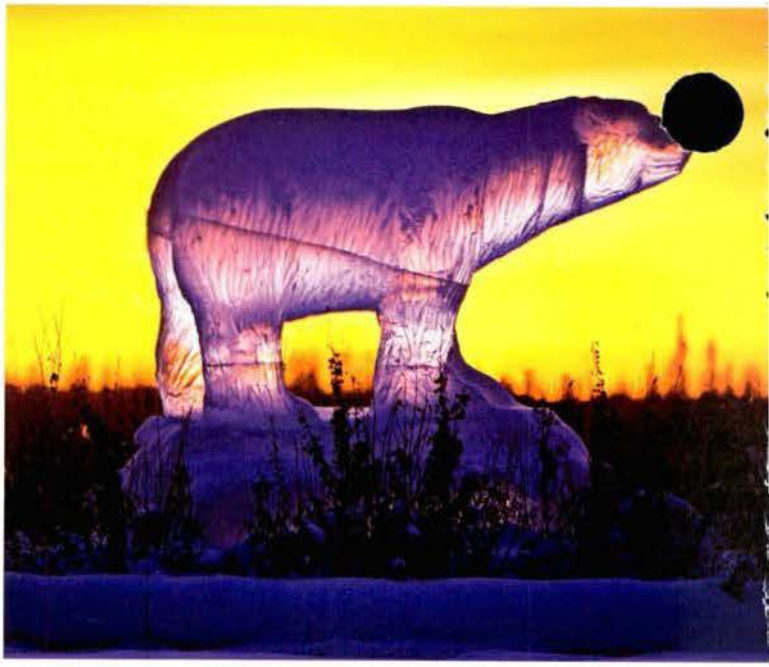
In December 2013, Indiana University – Bloomington student Andrew Hsu wrote an email complaining to his professor about the scheduling of his Introductory Psychology exam. As a result of his mildly rude, but generally benign, email, Hsu was charged with a violation of the university's policy concerning Personal Misconduct on University Property. After an initial hearing, the university chose not to impose sanctions but still left the case "open" and informed Hsu that any further conduct violations on his part would lead to immediate punishment. FIRE contacted President Michael



A. McRobbie, pointing out that Hsu's email was fully protected speech and did not constitute misconduct. As a result of FIRE's intervention, all charges against Hsu were dropped and his case was permanently closed.

UNIVERSITY OF ALASKA FAIRBANKS

The University of Alaska Fairbanks (UAF) student newspaper, *The Sun Star*, was subjected to sexual harassment investigations for nearly a year based on two articles published in April 2013. After a lengthy investigation in which UAF concluded that the articles were constitutionally protected, an appeal was filed and UAF appointed an external attorney to investigate the paper yet again. Following a letter from FIRE, the university finally confirmed that the articles enjoy full constitutional protection and ended the prolonged investigation.



"I can't thank you enough for what FIRE did for me and does for others. I had a very hard decision to make in coming back this semester. But part of what propelled me was how hard so many people worked to protect my academic freedom, and I felt that I had to come back and stand up for that."

Patricia Adler,
University of Colorado Boulder professor

"Thanks for all of your help. I really appreciate all that you've done. We've made a change and that is what is important."

Jonathan Divin,
University of Texas at Austin student

"I just want to take a moment to thank you guys for how much work you've put into my case. It's really been unbelievably helpful..."

Andrew Hsu,
Indiana University – Bloomington student

ADVANCING REFORM:
TACKLING SPEECH CODES ON CAMPUS

FIRE NOT ONLY DEFENDED STUDENTS AND FACULTY MEMBERS IN INDIVIDUAL CASES, but also proactively and systematically cataloged and challenged the campus policies that spark such rights violations. Through in-depth research and legal and public advocacy, FIRE's Policy Reform Project worked throughout the year to secure significant reforms to some of the nation's most egregious speech codes.

FIRE'S SPOTLIGHT DATABASE

FIRE's Spotlight Database continued to provide a critical foundation for these efforts. The most comprehensive resource of its kind, Spotlight currently contains detailed information about policy restrictions on speech at more than 400 colleges and universities. Thanks to Spotlight, FIRE was able to record the overall state of campus policies, conduct targeted reform efforts, inspire interest from those seeking change, and motivate hundreds of media reports on the crisis of unconstitutional speech codes.

REPORT: SPOTLIGHT ON SPEECH CODES 2014

In January 2014, FIRE published our eighth annual speech code report. The report's data showed that for the sixth year in a row, the percentage of American colleges and universities that systematically violate students' and faculty members' right to freedom of expression has dropped. Although a high percentage (59%) of schools still maintain policies that clearly and substantially restrict students' and faculty members' expressive rights, this number is down from 75% six years ago, indicating that more universities are beginning to take their obligation to protect free speech rights seriously.

*"[FIRE's Spotlight] report is **enlightening** and an **interesting and informative read**."*

Melanie Graysmith,
higher education reporter,
Examiner.com

SPEECH CODE OF THE MONTH

By highlighting some of the nation's worst speech codes in an effort to educate the public about the problem—and oftentimes the absurdity—of speech codes, our "Speech Code of the Month" feature generates the pressure necessary to encourage an institution to abandon a repressive policy. In the last year, that public pressure sparked revisions to policies at the University of Central Arkansas, Florida Atlantic University, the University of Texas San Antonio, Centre College, Western Kentucky University, and Virginia State University.

As of June 2014,

55 OF THE 110 SCHOOLS

(50%) named as "Speech Code of the Month" institutions since the program's inception in 2005 have revised the policies targeted by FIRE.

Power in Numbers

The percentage of red light public schools continued to drop, from 61.6% last year to

57.6% THIS YEAR.

The percentage of red light private schools also fell, from 63.4% last year to

61.5% THIS YEAR.

Thanks to the revisions secured by FIRE's Speech Code of the Month program this year, nearly

100,000 STUDENTS

at these institutions are free from illiberal restrictions on their expression.

This year, FIRE secured

11 POLICY CHANGES

affecting nearly 200,000 students, bringing our total revision record to 136 individual policy changes affecting almost

2.5 MILLION STUDENTS

(and countless more yet to arrive on campus).

Since 1999, FIRE's Policy Reform Project has secured 74 individual policy revisions affecting nearly

1.8 MILLION STUDENTS.

WHO MADE THE "GREEN LIGHT" LIST?

FIRE celebrated vital school-wide reforms this year, welcoming two new schools to our list of green light institutions that maintain no restrictive speech codes. First, in December 2013, Oregon State University (OSU) joined this elite group of colleges and universities after it eliminated its last remaining unconstitutional speech code, an overly broad and vague "Sexual Harassment and Sexual Violence" policy. With that revision, OSU became the 17th institution to earn a green light rating and the first one in Oregon to do so.

Three months later, OSU was joined by Georgetown College in Kentucky. Administrators worked one-on-one with FIRE staff members to revise the college's policies, and Georgetown officially earned its green light rating in March. It is now the 18th green light institution nationwide and the second in Kentucky.

OSU and Georgetown were the eighth and ninth institutions in just over four years to be recognized as green light schools, a trend that reflects growing awareness of free speech issues on campus as well as increased collaboration between students, administrators, and FIRE.

"[T]he school could get away with far worse speech policies due to the discouraging academic culture here ***if it weren't for FIRE's vigilance.***"

Kelly Barber,
University of Florida student and
FIRE's April 2014 Student Spotlight

"I knew a few of Towson's policies weren't great, but this will really help me articulate why."

Allie Woodfin,
student at Towson University, thanking FIRE for its comprehensive speech code research.

"What can I say about FIRE. ***You guys are the greatest."***

Michael Giusta,
professor at Allan Hancock College, after working with FIRE to advocate against a "free speech zone" policy

"Georgetown College is excited to join the ranks of green light institutions. ***We are committed to protecting students' right to free speech on campus****, and our revised policies now fully reflect that commitment."*

Michael Brown
director of Orientation and Student Accountability, Georgetown College

DEFEATED CODES:

WESTERN KENTUCKY UNIVERSITY'S COMPUTING ETHICS POLICY

This code prohibited the use of university email resources for "[t]ransmitting statements, language, images or other materials that are reasonably likely to be perceived as offensive or disparaging of others based on race, national origin, sex, sexual orientation, age, disability, religious or political beliefs."

THE UNIVERSITY OF CENTRAL ARKANSAS' LIST OF "OFFENSES SUBJECT TO DISCIPLINARY ACTION"

The list included "annoying" speech and "disparaging remarks directed at another individual on Facebook, MySpace or other internet site."

VIRGINIA STATE UNIVERSITY'S STUDENT CODE OF CONDUCT

The code stated that "[s]tudents shall not injure, harass, threaten, offend, or degrade a member of the University community."

LONGWOOD UNIVERSITY'S DEMONSTRATIONS POLICY

The policy required students to use a designated "free speech zone," stating that "a request for use of this area must be made a minimum of five (5) business days in advance of the event.... Groups or individuals may only use those designated areas once per month and for a maximum period of two days."

Thanks to FIRE, these policies are no longer in effect.

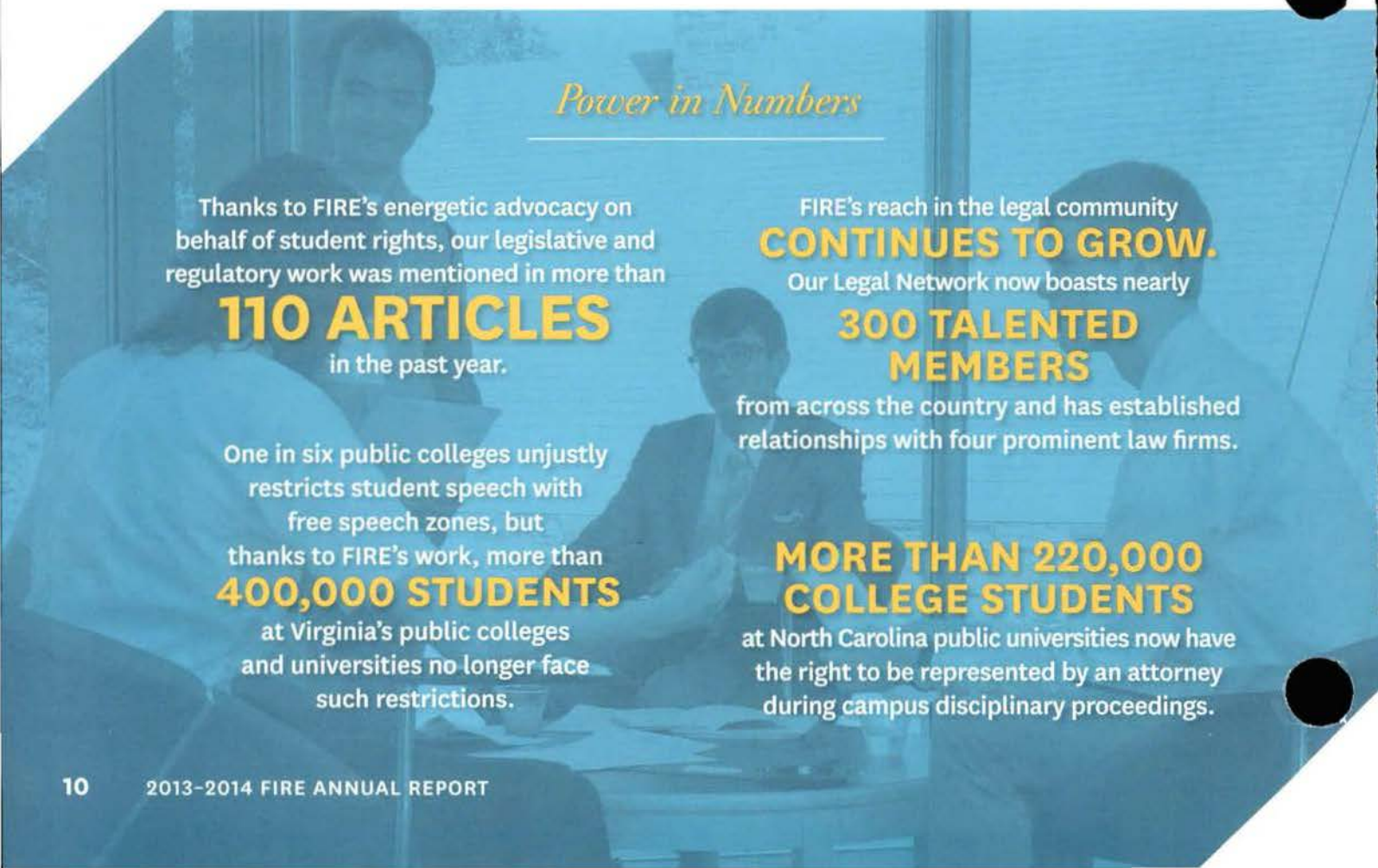
WORKING OFF CAMPUS:
FIRE'S LEGAL AND LEGISLATIVE INITIATIVES

OVER THE COURSE OF THE LAST YEAR, FIRE continued to support vital legal precedent, advocate for greater legislative protections, and counter dangerous regulatory threats.

AMICUS CURIAE BRIEFS

As part of that advocacy, FIRE maintained our active *amicus curiae* ("friend of the court") briefs practice, through which we strategically weigh in on cases that have important implications for civil liberties on campus. In the last year, FIRE authored five critical *amicus curiae* briefs:

- FIRE filed a brief with the United States District Court for the Eastern District of Pennsylvania in the case of *Harris v. St. Joseph's University*, urging the court to rule in favor of a student challenging his dismissal from St. Joseph's on due process grounds.
- In October, FIRE and the Student Press Law Center (SPLC) filed a brief with the United States Court of Appeals for the Ninth Circuit in the case of *O'Brien v. Welty*, supporting a student who was disciplined for asking two professors about their involvement in a campus magazine and for attempting to videotape the encounter.
- This past December, FIRE filed another brief with SPLC in the United States Court of Appeals for the Ninth Circuit in the case of *Oyama v. University of Hawaii*, supporting a student who was denied a student teaching position because his views were "not in alignment" with professional teaching standards.
- In a second December 2013 brief, filed in the case of *Barnes v. Zaccari*, FIRE asked the United States Court of Appeals for the Eleventh Circuit to reverse a federal district court's September 2010 ruling dismissing



Power in Numbers

Thanks to FIRE's energetic advocacy on behalf of student rights, our legislative and regulatory work was mentioned in more than

110 ARTICLES

in the past year.

One in six public colleges unjustly restricts student speech with free speech zones, but thanks to FIRE's work, more than

400,000 STUDENTS

at Virginia's public colleges and universities no longer face such restrictions.

FIRE's reach in the legal community

CONTINUES TO GROW.

Our Legal Network now boasts nearly

300 TALENTED MEMBERS

from across the country and has established relationships with four prominent law firms.

MORE THAN 220,000 COLLEGE STUDENTS

at North Carolina public universities now have the right to be represented by an attorney during campus disciplinary proceedings.

former Valdosta State University (VSU) student Hayden Barnes' First Amendment claim against former VSU President Ronald M. Zaccari.

- In March 2014, FIRE submitted an *amicus brief* to the Supreme Court of the United States in the case of *Susan B. Anthony List v. Driehaus*, which involved a constitutional challenge to an Ohio law prohibiting "false statements" in electoral campaigns. While the particulars of this case did not involve campus expression, FIRE's brief argued that the United States Court of Appeals for the Sixth Circuit's ruling threatened to create a significant hurdle for those wishing to challenge restrictions on speech in court, including students and faculty seeking to challenge speech codes. Fortunately, in June, the Supreme Court unanimously reversed the Sixth Circuit's decision. FIRE was thrilled by that decision, and we are hopeful that our other briefs will also help secure positive rulings on key issues, such as due process and student expression.

LEGISLATIVE AND POLICY PROJECT

In addition to our work in the courts, FIRE continues to work on a federal level to counter those legislative and regulatory policies that threaten to erode individual rights on campus. Now entering its third year, our Legislative and Policy Project has established a powerful voice for FIRE on Capitol Hill. Over the course of the last 12 months, our Legislative and Policy Director organized dozens of meetings with key Congressional offices to present FIRE's position on critical issues on campus. That work culminated in a formal comment to the House of Representatives' Committee on Education and the Workforce on the upcoming debate over the reauthorization of the Higher Education Act (HEA). The comment allowed FIRE to comprehensively explain our position on key topics to the full body of the Committee, including the proper, constitutional definition of hostile environment harassment, the need for legislation banning "free speech zones" on public college campuses, the merits of right-to-counsel protections for students facing discipline, and the necessity of password protection to guard online student speech. By communicating our issues and ideas at the earliest date and to the highest levels, FIRE ensured that we will play a critical role in future HEA debates and in discussions over key topics such as student privacy or harassment.

Outside of our legislative work, FIRE also remained focused on policy reform at the regulatory level. In particular, FIRE has continued to publicly fight the ongoing deterioration of due process rights

*"[FIRE] is **a foremost civil rights and civil liberties leader** [and] an educational leader in truly Americanizing American colleges ..."*

Nat Hentoff,
reporting on FIRE's latest legislative work

sparked by the April 2011 "Dear Colleague" letter issued by the Department of Education's Office for Civil Rights. In the past year, FIRE has stood front and center in key debates over sexual assault and harassment on campus, countering a May 2013 mandate proposed by the Departments of Education and Justice, publicly addressing the need for greater rights protections in response to the recommendations of the White House Task Force to Protect Students from Sexual Assault, and voicing concerns over proposed legislation on the issue of campus sexual assault. While the debate over due process is far from over, FIRE's work this year established a critical platform for our mission and brought much-needed public attention to this pressing issue.

In addition to this national advocacy, FIRE worked at the state level to ensure strong protections for student rights. These efforts yielded significant accomplishments in the past year.

"The Student & Administration Equality Act (SAE Act) ... insures that a student's rights are protected and the proper due process is followed. ***FIRE not only worked with me in developing this important language but they rallied behind me by speaking at committee hearings in support.*** *It was a great team effort and enormous victory for student rights in the state of North Carolina."*

Representative John R. Bell,
North Carolina General Assembly member and sponsor of the state's right-to-counsel bill

"I think this law is fantastic news for the College and for students. William and Mary is a community of diverse and dedicated people. ... I'm sure it'll give everyone the comfort of knowing they have a right to share their experiences and ideas."

College of William & Mary student
reacts to Virginia's "free speech zone" legislation

"[The bill is] a great step for free speech on campuses in Virginia."

John Hill,
George Mason University student reacts to Virginia's "free speech zone" legislation

First, in August 2013, we were thrilled to secure the passage of a right-to-counsel bill in North Carolina. This bill is the first of its kind nationally and guarantees that more than 220,000 college students in North Carolina no longer have to face the daunting task of navigating the campus judicial process on their own.

Then, in April 2014, FIRE secured one of our biggest legislative accomplishments. We were thrilled to celebrate the passage of new, first-of-its-kind legislation banning "free speech zones" on Virginia's public college campuses. Signed into law by Governor Terry McAuliffe, the bill designates outdoor areas on campus as public forums, giving students at Virginia's public colleges and universities the right to engage in speech without unreasonable restrictions.

FIRE is currently advocating for legislative protections in states such as California, West Virginia, Massachusetts, and Texas—progress that would free millions of additional students from unconstitutional campus policies.

By taking our policy advocacy outside the academy, FIRE has secured critical legal and legislative progress. In the past year, FIRE successfully responded to national policy threats, engaged legislative contacts, generated public awareness, and protected vital legal precedent. This work earned us recognition from *The Huffington Post* as one of the nation's most influential forces in higher education!

TAKING A STAND:
A NEW ERA FOR FIRE'S ADVOCACY EFFORTS

WHILE WE ARE PROUD OF THE SUCCESS OF OUR POLICY AND ADVOCACY WORK AND CONTINUE TO BELIEVE in the strategy that guides it, FIRE also recognizes the need to create more powerful incentives to transform the incremental progress we've celebrated over the past 15 years into widespread, long-term change.

Therefore, this year, FIRE launched an ambitious new project that will challenge the status quo and rebalance campus priorities. Our new Stand Up For Speech Litigation Project will mount numerous court challenges against some of the nation's most egregious speech codes, in conjunction with ongoing policy reform efforts and a national publicity campaign. In executing this groundbreaking project, FIRE will take advantage of every possible source of leverage in order to achieve results that drive deep into the campus culture.

Over the course of the last year, FIRE worked to prepare for the launch of this campaign, assembling a talented and dedicated project team, conducting in-depth research to select litigation targets, organizing plaintiff outreach efforts, and coordinating two preliminary legal challenges.

STANDING UP TO "FREE SPEECH ZONES"

The project's first legal challenge targeted a Modesto Junior College (MJC) "free speech zone" policy at the center of an absurd case from last fall. Citing the policy, MJC administrators prohibited student Robert Van Tuinen from handing out copies of the Constitution on Constitution Day, telling him that such activity required advance registration and that even then, registered speech should be confined to a small concrete patio outside the Student Center. Despite a letter from FIRE and overwhelming media pressure, the California public college didn't act to revise the policy. As a result, FIRE worked with Van Tuinen to coordinate a lawsuit in October 2013. In February, MJC agreed to a settlement, revised its policies, and paid $50,000 in compensation and attorney fees.

Photo Credit: Judd Weiss

Thanks to FIRE's successful lawsuit, nearly

18,000 STUDENTS

at Modesto Junior College are now free to exercise their free speech rights in any public area on campus.

The project's second preliminary challenge focused on yet another unconstitutional "free speech zone policy"—once again enforced against students handing out copies of the Constitution! This April, two University of Hawaii at Hilo students worked with FIRE to file suit against that policy. In May, the university announced it would suspend the free speech zone. FIRE is now working to secure a final settlement in that case. In both of our preliminary challenges, FIRE was able to demonstrate the very real consequences of continued administrative intransigence: costly litigation and embarrassing public exposure.

"It's a thousand times better now." – Robert Van Tuinen

LAUNCHING THE STAND UP FOR SPEECH LITIGATION PROJECT

On July 1, at an event at the National Press Club in Washington, D.C., FIRE formally launched the Stand Up For Speech Litigation Project. In front of a national audience, FIRE officially announced the filing of four lawsuits, our plans to file more challenges in rapid succession, and our intention to ultimately file suits against public institutions in every federal circuit. As part of our call to "stand up for speech," FIRE also began a coordinated media and marketing campaign to publicize the project, enlist support, and motivate reform. That campaign elicited significant attention in its first weeks, with articles in outlets such as *The New York Times, The Wall Street Journal, USA Today, The Chronicle of Higher Education, the Los Angeles Times, the Chicago Tribune*, and *The Washington Post*, and appearances on several national and local television and radio programs.

With the launch of the Stand Up For Speech Litigation Project, FIRE closed a year of significant defense and policy success by ushering in a new year of expanded activism. Moving forward, FIRE will continue to file additional suits, engage in policy-reform efforts, and promote public awareness as the campaign progresses. We are confident that all of our efforts will further amplify the risks of engaging in censorship and the rewards of respecting free expression, thereby generating the incentives necessary for long-lasting change.

Power in Numbers

Since our founding, FIRE has
WON 100%
of our speech code challenges in court.

As of July 1, 2014, FIRE's
Stand Up For Speech Project had filed
SIX LAWSUITS
in four federal circuits. Those cases
has the potential to effect more than
160,000 STUDENTS
combined and to help defeat speech
codes affecting millions more.

In the first 24 hours after the launch
of FIRE's litigation project, nearly
40 MEDIA OUTLETS
had already reported on the campaign.

Even before the official launch of
the Stand Up For Speech Project,
FIRE's initial cases at Modesto
Junior College and the University of
Hawaii at Hilo gained significant media
attention, with more than
80 ARTICLES
covering the cases.

"Our big hope is to stand up for student speech across the country and send a message to universities that speech that is unpopular in any way—funny messages or controversial—we want the speech codes to be changed, we want to make it that students will be able to have their say."

Isaac Smith,
student-plaintiff from Ohio University

"We don't want anyone to be made to feel smaller than administrators just because they're a student. We want them to feel like having an opinion and having a belief isn't wrong."

Erin Furleigh,
student-plaintiff from Iowa State University

"Free speech movement ... FIRE is attempting to light one."

James Taranto,
Wall Street Journal columnist

"When you stand up for free speech and other rights on campus, you are not only fighting for yourself, but on behalf of the thousands of students who currently attend, and for the many thousands who will attend. We should not let our colleges intimidate us and deny us our rights. We need to always be ready to fight for our rights both on and off campus."

Vincenzo Sinapi-Riddle,
student-plaintiff from Citrus College

EMPOWERING STUDENTS:
FIRE'S EXPANDING EDUCATION PROGRAMS

IN ADDITION TO DEFENDING THEIR RIGHTS, FIRE ALSO PROVIDED STUDENTS AND PROFESSORS ACROSS the country with the resources to protect freedoms on their own campuses. From valuable resources like our *Guides to Student Rights on Campus* to critical outreach to high school students and in-depth education through our annual Internship Program, FIRE worked to give individuals on campus the knowledge and tools they need to defend the First Amendment.

FIRE'S NEW HIGH SCHOOL CURRICULUM

Recognizing that students need such knowledge before they even arrive on campus, FIRE has continued to expand our "Know Before You Go" Project for high school students. In September 2013, we partnered with the Bill of Rights Institute (BRI) to release a unique curriculum package aimed at educating students about the state of freedom of speech on campus. Focusing on how student First Amendment rights change after high school graduation, the curriculum provides students with an in-depth look at the history of our basic freedoms, an analysis of censorship on campus and past FIRE cases, and interactive projects that explore ways to defend individual liberty. In addition to the curriculum materials, which include readings, handouts, posters, discussion questions, and activities for use by high school teachers in their classrooms, FIRE also designed a mobile website in conjunction with the curriculum that features valuable resources and relevant links, along with a FIRE video. The website, collegebillofrights.org, is accessible to students via mobile platforms, and when students text "RIGHTS" to a designated number, they are automatically directed to the page.

"FREEDOM IN ACADEMIA" ESSAY CONTEST

FIRE launched our sixth annual "Freedom in Academia" essay contest in August. The 2013 essay contest enlisted submissions from high school juniors and seniors, prompting thousands of entrants to explain why they believe free speech rights are crucial to higher education and to our democracy. We were proud to announce the contest winners this January.

Power in Numbers

As a result of FIRE's energetic marketing, our essay contest website attracted more than

100,000 HITS

and FIRE received nearly

3,300 SUBMISSIONS

in 2013—more than ever before.

Since FIRE launched the "Freedom in Academia" essay contest in 2008, we have received nearly

13,000 SUBMISSIONS

and the videos at the center of the contest have attracted more than

400,000 VIEWS.

FIRE distributed more than

3,000 HARD COPIES

of our *Guide to Free Speech on Campus* last year.

FIRE received almost

275 APPLICATIONS

for our 2014 Internship Program—the most in the program's history.

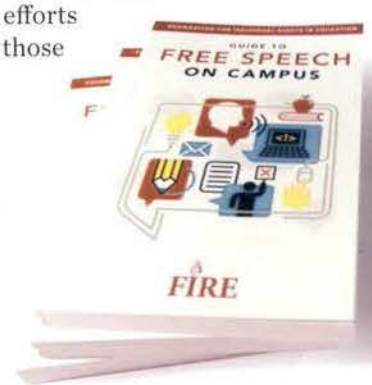
- Kanitta Kulprathipanja, a senior at Schaumburg High School in Schaumburg, Illinois, won first prize and a $10,000 college scholarship for her essay inviting readers to imagine what her essay would look like without freedom of speech.
- Isabella Penola, a home-schooled junior from Zionsville, Indiana, took second place and received a $5,000 college scholarship.
- FIRE also awarded seven runner-up awards, for a total of $20,000 in scholarship funds.

"[FIRE's essay] contest allowed me to learn about the issue of free speech on college campuses and how it affects me. Now that I will be entering college as a freshman next year, free speech is becoming increasingly important to me, and I want to make sure my rights are protected."

David Wu,
"Freedom in Academia" essay contest entrant

GUIDES TO STUDENT RIGHTS ON CAMPUS

FIRE has distributed over 300,000 hard copies of these *Guides* since our founding. Following up on the successful release of our revised *Guide to Free Speech on Campus*, FIRE recently began updating our *Guide to Due Process and Fair Procedure on Campus*. These ongoing revisions will help guarantee that the *Guides* series will remain the centerpiece of FIRE's educational efforts and an indispensable resource for those facing censorship on campus for years to come.



"An excellent resource."

"Straightforward and easy to understand."

"Great book and lots of useful information."

"An indispensable companion for any student working to promote free speech on campus."

Student perspectives
on FIRE's *Guide to Free Speech on Campus*

PAST INTERNS DO BIG THINGS

2013 intern Megan Zielinski published a piece in the *Washington University Political Review*, which noted that her school, Washington University in St. Louis, was featured as FIRE's April 2013 Speech Code of the Month. Following up on this article, Megan met with campus administrators to discuss the school's policies and the need for revision.

"The [internship] program ***truly expanded my intellectual horizons in ways that my college courses couldn't touch.*** *I left with a better understanding of individual rights, discourse, and the importance of free speech not just on campus but in our world."*

Former FIRE Intern Maggie Obriwin

Fellow 2013 intern Daniel Chapman presented a paper on campus censorship to the Michigan Sociological Association's annual conference that won the 2013 Undergraduate Student Paper Competition. Daniel also worked hard to generate pressure for policy reform at his school, Saginaw Valley State University. Just a few months into the academic year, Daniel rallied his fellow students, continued his work in journalism, and met with the Title IX coordinator at his institution to discuss the school's problematic sexual harassment policies.

Interns also continue to carry lessons from their experience months after their tenure, and years after their graduation. Former interns have gone on to study law at Harvard University, New York University, and Columbia University; to work full time at organizations such as Students For Liberty, Teach for America, the State Policy Network, and the Reason Foundation; to clerk for Supreme Court justices; and even to come back to advocate for student rights full time at FIRE.

SUMMER INTERNSHIP PROGRAM

FIRE continued to provide an opportunity for talented and dedicated students to gain firsthand experience and in-depth knowledge of the First Amendment through our annual Internship Program. This June, FIRE welcomed seven undergraduate interns and one legal intern as part of our 2014 internship class. These interns came to us from Case Western Reserve University, Colgate University, Southern Oregon University, Stanford University, The College of William & Mary, the University of Pennsylvania, the University of Pennsylvania Law School, and the University of Pittsburgh. The eight-week program offers these students direct experience defending civil liberties while also providing them with educational opportunities, including attending FIRE's summer conference and participating in academic seminars with FIRE's leadership and other free speech experts. During their time at FIRE, the interns get a behind-the-scenes look at FIRE's work on behalf of fundamental liberties at America's colleges and universities. They help with casework, assist with legal scholarship, write for FIRE's blog, *The Torch*, research university policies and potential violations of the First Amendment, and leave FIRE having become powerful advocates for liberty at their colleges and universities.

"My summer here at FIRE has been an ***amazing experience*** *and it surpassed all my expectations."*

"This experience introduced me to a range of topical First Amendment issues on campus *and taught me a great deal about the foundations of free speech."*

"This internship was ***as much about learning*** *as it was about doing various projects."*

FIRE's 2013 Summer Interns

TRAINING LEADERS:
THE FIRE STUDENT NETWORK

THE FIRE STUDENT NETWORK PROVIDES A KEY FOUNDATION FOR OUR EDUCATIONAL OUTREACH AND AN important avenue towards reaching activists. This dynamic coalition of students, faculty members, and alumni is dedicated to advancing individual liberties on their campuses with the aid of grassroots support from FIRE. The network's resources serve as primers in the philosophy of liberty and workshops on strategies for action, empowering students and assisting individual activists working for policy reform.

In 2014, the FIRE Student Network was formally rebranded, leaving behind the Campus Freedom Network name and website. As of February 2014, the main FIRE website now serves as the official home of the FIRE Student Network, a move that helped integrate our student-outreach efforts more fully into our overall work. This rebranding also included the release of a new FIRE logo that is more student-friendly, the launch of Student Network Instagram, Tumblr, and Vine accounts, and the release of new Student Network "swag" to promote FIRE on campus. All of this promotional work has helped spark new interest from existing members and attract new recruits. As a result, the Student Network continued to grow, adding over 1,100 student, faculty, and alumni members during the 2013–2014 academic year.

"I would recommend this conference in a heartbeat! It was a ***terrifically rewarding and intellectually stimulating*** *weekend."*

"I left the event inspired and invigorated!"

"This conference not only acts as an educational seminar but also as ***a rallying call for students.***"

Student perspectives on FIRE's 2013 Student Network conference

THE FIRE STUDENT NETWORK SUMMER CONFERENCE

The year began with our largest student conference to date, hosted from July 19–July 21 at Bryn Mawr College, just outside Philadelphia. FIRE's sixth annual conference brought together committed students from across the country to learn from eminent First Amendment scholars and meet fellow advocates for free speech on campus. Over the course of the weekend, students participated in lectures, panels, and break-out sessions; learned how they can defend core constitutional freedoms; and developed action plans for reform at their own colleges and universities.

These attendees heard keynote addresses from noted commentator Juan Williams, well-known columnist Megan McArdle, and preeminent First Amendment attorney Robert Corn-Revere. Other speakers included a student panel and FIRE staff members, who discussed the philosophical and legal arguments for First Amendment rights on campus and offered attendees lessons on how they can improve the culture of free speech at their schools. Upon returning to their campuses with these lessons, many of FIRE's conference attendees have gone on to become active and forceful advocates for liberty on campus.

FREE PRESS WEEK

In February, FIRE hosted our second annual Free Press Week, which included a presentation at the National College Journalism Conference, a series of blog posts highlighting important cases and common free speech challenges facing the campus press, and a webinar with lawyers from both FIRE and the Student Press Law Center, who answered questions about student journalists' rights on campus. FIRE continues to engage in broader outreach to student journalists, as well, gaining valuable coverage in campus publications. Such coverage has helped FIRE reach out to support those who have mentioned our work and to introduce our work to those who are not yet aware of it.

FIRE IN THE "BIG EASY"

FIRE organized a new program for some of the nation's most dedicated student leaders this March, when we hosted our first-ever "Leaders in Student Rights" conference in New Orleans. Over the course of the two-day conference, 25 students met with FIRE staff members, examined past cases, explored legal precedent, and developed action plans to bring back to their own campuses. The conference gave these dedicated students the chance to get in-depth support from FIRE for their activism on campus. Just a few months after the conference, the attendees are already hard at work. For example, Troy University student Jeremiah Baky left the conference with a memorandum prepared by FIRE about his school's speech codes, which he immediately circulated around campus, sparking a petition signed by hundreds of students that called on Troy to revise its policies. Other attendees have already met with administrators at their institutions and plan to write campus op-eds, organize on-campus rallies, and directly challenge unconstitutional policies.

STUDENT SPOTLIGHT

FIRE highlights campus advocacy on our website with our Student Spotlight series. In the past year, the Student Spotlight has recognized reformers at schools such as the University of Central Arkansas, the University of Wisconsin – Madison, Marshall University, California Polytechnic State University, Stetson University, the University of Florida, Troy University, and the University of North Texas. FIRE is thrilled to be able to honor these students for taking the initiative to actively educate their peers about free speech on campus and demand that their colleges respect their rights and those of their fellow students.

*"The fight for student rights on campus begins with you. Simple interest in issues you see firsthand is the beginning of taking on the battle. Engage the discussion and get people thinking ... **we have the power to be the needed wake up call.**"*

Alex Anderson,
University of North Texas student and
FIRE's June 2014 Student Spotlight

*"This was by far one of **the most influential conferences** I have been to."*

Jeremiah Baky,
Troy University student, commenting on FIRE's "Leaders in Student Rights" conference

Power in Numbers

At the close of the 2013 – 2014 academic year, the FIRE Student Network had

MORE THAN 7,700

student, faculty, and alumni members at nearly 1,000 unique colleges and universities.

FIRE was mentioned in more than

65 CAMPUS ARTICLES

this year. Overall, FIRE recorded nearly

160 ARTICLES

on First Amendment issues in campus newspapers.

The Student Network conference agenda was well received: 2013's attendees all rated the conference as either a

4 OR 5

OUT OF 5 in terms of overall quality.

In the past year, the FIRE Student Network attended

16 STUDENT CONFERENCES, HOSTED SIX WEBINARS, & ORGANIZED 26 ON-CAMPUS SPEECHES.

72 STUDENTS

attended the 2013 FIRE Student Network conference—more than ever before.

*"The FIRE staff and organization is the best, **most genuine, prompt, caring, and hard-working** organization I've worked with."*

Katharine Orr,
University of South Florida student and "Leaders in Student Rights" conference attendee

ENLISTING SUPPORT:
A BANNER YEAR FOR PUBLIC AWARENESS

FIRE'S PUBLIC AWARENESS PROJECT IS AN INTEGRAL PART OF OUR WORK PROTECTING CAMPUS RIGHTS. By generating awareness, FIRE ensures that each threat to campus liberty meets not only a strong defense, but also a public one. This year, by working to reach Americans in every medium, FIRE proved that our profile has never been stronger.

FIRE'S NEW LOOK!

In order to guarantee the ongoing success of our publicity efforts, FIRE worked over the course of the year to redesign our website and rebrand our look. In February, we officially launched our redesigned platform and released a fresh, bold logo. Together, these changes had a substantial impact on FIRE's ability to effectively execute our public-outreach efforts, providing a more accessible home for our resources and a more compelling image for our mission.

Our new site now offers visitors a modern and creative design and a more interactive and intuitive experience. In particular, FIRE revamped our Spotlight database, adding HTML5 components in order to provide a more user-friendly experience. The website is also formatted for mobile and tablet use so that tech-savvy users find an easy-to-read page for on-the-go access. Visitors can access resources such as our *Guides to Student Rights on Campus*, submit a case, read the latest updates from our blog, *The Torch*, and watch FIRE's videos.

VIDEO INITIATIVE

This year, FIRE produced and distributed 18 videos, including profile pieces of FIRE's co-founders Alan Charles Kors and Harvey Silverglate, coverage of our 2013 student conference, a piece on due process and the Duke University lacrosse case, and several short videos offering firsthand accounts of censorship from students.

- FIRE's video "Don't Cage My Speech! A Student Schools His College" chronicled our successful fight against an unconstitutional free speech zone at the University of Cincinnati. The video has attracted nearly 17,000 views since its release and was recognized by the 2014 Anthem Film Festival with an award for Excellence in Filmmaking in the Short Documentary category.

- The shocking video at the center of FIRE's case at Modesto Junior College attracted nearly 250,000 views on YouTube. Thanks to FIRE's video platform, hundreds of thousands of Americans were able to witness campus censorship in action.

SOCIAL MEDIA

Social media continues to help FIRE connect with new constituents and our reach in platforms such as Twitter and Facebook continued to grow this year. We coordinated several social media campaigns, including a "Back to School with the First Amendment" photo contest. People from around the country submitted a photo of themselves celebrating the First Amendment, along with a caption stating, "I believe free speech

is important because..." FIRE selected 11 finalists and fans voted by "liking" their favorite photo. Hundreds of votes were cast and the Facebook album for the contest reached over 14,000 people. By building our presence through social media and attracting attention through campaigns like our "Back to School" photo contest, FIRE has expanded our scope, generated increased levels of public awareness, and created new incentives for change on campus.

MEDIA OUTREACH AND COVERAGE

While new media growth is vital, traditional media provides the most effective tool in the fight for campus liberty. And FIRE continues to take full advantage of the power of that media attention. In fact, thanks to our revamped website, rebranded logo, and growing national reputation, FIRE reached more Americans than ever before in the past year. That impact was more than just quantitative: FIRE received quality coverage in some of the nation's most recognized outlets, such as *The New York Times, The Wall Street Journal, The Washington Post, USA Today, The Christian Science Monitor,* and the *Los Angeles Times*. In addition to this coverage, FIRE staff and representatives continued to be featured on some of the nation's biggest media outlets, including NPR, CBS, FOX News Channel, and C-SPAN.

"DISINVITATION SEASON" HITS THE AIRWAVES

The 2014 "disinvitation season"—a trend every spring—sparked a national discussion about the state of free speech on campus when such noted individuals as Ayaan Hirsi Ali, Condoleezza Rice, and Christine Lagarde were either disinvited or withdrew from commencement ceremonies due to student and faculty protests. Thanks to FIRE's expanded public profile, the media turned to our expertise in the midst of this national story.

FIRE commented widely on these incidents, with President Greg Lukianoff appearing on Fox News Channel's *Special Report*, NBC's *The Today Show*, CBS *This Morning*, CNN's *New Day*, and C-SPAN's

"It is because of speakers such as yourself that I was reminded why I got into newspaper journalism in the first place—to try to ***make a difference.***"

Shelby Case,
student media advisor, praising
FIRE Director of Legal and Public Advocacy
Will Creeley's presentation at the
2014 National College Journalism Convention

"Tightly written, interesting range of topics covered."

Education Writers Association
judges' praise for *The Torch*,
which was recognized as one of the best
education blogs in the country by the
National Awards for Education Reporting

Power in Numbers

In the first half of 2014, FIRE had an average of nearly

60,000

unique monthly website visitors.

As of June 2014, FIRE had more than

8,100 TWITTER FOLLOWERS,

NEARLY 11,000 FACEBOOK "LIKES"

AND OVER 1.5 MILLION YOUTUBE VIEWS.

FIRE was mentioned in

493 NEWS ARTICLES

in 195 unique publications with a combined print and online circulation of more than

510 MILLION.

In that same period from 2012-2013, FIRE was mentioned in

303 ARTICLES

—A 60% DIFFERENCE.

FIRE staff and representatives spoke on

47 RADIO BROADCASTS,

MADE 23 TELEVISION APPEARANCES,

AND DELIVERED 55 PUBLIC SPEECHES

in the last year.

Washington Journal. FIRE was also quoted in *The Washington Post, The Nation, The Chicago Sun-Times, The Boston Globe*, and *Politico*, and published pieces on the controversies for *Time* online and *The Huffington Post*.

In the midst of the ongoing story, FIRE published a report tracking the "disinvitation" trend over the last 15 years — data that was then covered in *The Chronicle of Higher Education*, Reason.com, and Sp!ked. This media coverage gave FIRE an invaluable opportunity to spread our message to a large audience, and we reached almost 15 million Americans through television appearances and millions more with 45 articles in national print and online publications.

FIRE SPEAKERS HIT THE ROAD

FIRE continues to coordinate speaking events, and our Speakers Bureau remains a crucial public-awareness tool. In addition to dozens of on-campus speeches and presentations at venues such as the Newseum, the Conservative Forum of Silicon Valley, and the First Amendment Lawyers Association Conference, FIRE organized a successful panel event at the National Constitution Center in Philadelphia in March. Featuring Jonathan Rauch of the Brookings Institution, Dr. Stanley Fish of the Cardozo School of Law, Professor Eric Posner of the University of Chicago Law School, and FIRE President Greg Lukianoff, the panel explored the nature and limits of free speech in America. More than 200 individuals attended and the event was later broadcast on C-SPAN.

"One of the greatest panels I've ever moderated. What an electric discussion!"

National Constitution Center President Jeffrey Rosen, praising FIRE's March 2014 event

LOOKING FORWARD:
FIRE'S 15TH YEAR

IN 1999, ALAN CHARLES KORS AND HARVEY SILVERGLATE CAME TOGETHER TO START AN ORGANIZATION committed to upholding the promise of individual liberty and the power of free expression at our colleges and universities. Responding to calls for assistance from across the country, FIRE was born out of an urgent need to defend those individuals targeted by unjust censorship and to strike down the policies that justified such illiberal violations. For 15 years, FIRE has responded to that need, going beyond defense to advocate for reform, sponsor activism, and generate awareness. In the last year, we've once again demonstrated our commitment to that mission.

Looking back on the last year—and the 15 years since our founding—it is evident that FIRE has had a significant impact. We have secured 285 major public victories and 135 speech code revisions through our defense work, policy outreach, and legal advocacy. In working towards such victories, FIRE has maintained a 100% speech code litigation success rate; we have secured a significant drop in the percentage of colleges and universities maintaining restrictive speech codes; and we have intervened in support of students and faculty members at nearly 200 institutions with an enrollment of almost 4.5 million individuals. Meanwhile, we have celebrated the release of resources such as our *Guides to Student Rights on Campus*; launched important outreach efforts such as our FIRE Student Network; secured media coverage that has reached millions of Americans; and branched out into new fields through campaigns such as our "Know Before You Go" Project and Video Initiative. All of these achievements represent a real impact on individuals around the country—as each "thank you" and word of praise we've received makes clear. Whether it is a student who is "forever grateful" for our advice or a reformer who has been inspired by our staff, FIRE's work has affected lives and sparked change.

This October, we will come together to celebrate that impact and 15 years of FIRE history. Our 15th anniversary gala will also offer an opportunity to look forward to FIRE's future and the battles to come. After all, FIRE may be proud of our accomplishments, but we also recognize that our success is by no means complete. In the coming months, we will commemorate our founding by embarking on an expanded strategy to take on new policy threats, national trends, and ongoing violations of liberty. With a new, ambitious litigation project, rebranded and renewed outreach projects, and ongoing advocacy projects that not only defend individual students, but also preserve and strengthen legal and legislative protections, FIRE will work to guarantee that our mission remains relevant and our work remains effective.

Our 15th year may hold great challenges, but it also promises great opportunities. In the course of our history, FIRE has grown from a small organization to a national force, while maintaining a deep passion for free expression and commitment to liberty. Together with our supporters, FIRE is working to ultimately honor the great democratic potential of our colleges and universities.

FIRE STAFF

Samantha Harris, Ari Cohn, Will Creeley, Azhar Majeed, Robert Shibley, Catherine Sevcenko, Molly Nocheck, Alisha Glennon, Gina Luttrell, Akil Alleyne, Greg Lukianoff, Peyton Cudaback, Susan Kruth, Bridget Glackin, Emily Buck, Pierce Babirak, Peter Bonilla, Nate O'Connor, Sarah McLaughlin, Ashley Adams, Joe Cohn.
Not pictured: Sean Clark

2013–2014 FINANCIALS

2013-14 SUPPORT AND REVENUE

CONTRIBUTIONS AND GRANTS: $3,092,602
INTEREST INCOME: $7,213
REALIZED LOSSES ON STOCK DONATIONS: ($1,291)
OTHER INCOME: $30,029
TOTAL SUPPORT AND REVENUE: $3,128,553

2013-14 EXPENSES

PROGRAM: $2,751,577
ADMINISTRATIVE: $269,693
DEVELOPMENT: $309,334
TOTAL EXPENSES: $3,330,604

BBB ACCREDITED CHARITY
give.org

*FIRE has moved to a July 1 to June 30 fiscal year. These 2013-2014 financials are the first year to reflect this new accounting period.

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FIRE wishes to extend a big "thank you" to all of those who have made our work possible, and especially to our Lodestar and Lighthouse donors.

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FIRE'S ETERNAL FLAME SOCIETY

FIRE's Eternal Flame Society honors those that have chosen to remember FIRE in their planned giving. We want to extend our gratitude for the following donors' deep commitment to FIRE and our important mission.

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Mr. James Ramsey

THE MISSION OF FIRE is to defend and sustain individual rights at America's colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

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SB2150
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FIRE
Foundation for Individual Rights in Education

ACCESS TO COUNSEL: A CRITICAL DUE PROCESS PROTECTION

Despite serious, life-altering consequences, colleges and universities routinely suspend and expel students as a result of verdicts reached in campus hearings that fall woefully short of providing meaningful due process protections. Most egregiously, **many institutions do not allow accused students access to counsel or the advisor of their choice, and those that do often restrict those advisors to a passive non-participatory function.** This substantial shortcoming casts a significant shadow over the reliability and basic fairness of these crucially important proceedings.

In *Goss v. Lopez*, 419 U.S. 565, 576 (1975), the Supreme Court of the United States addressed the applicability of the due process clause in the K-12 context when it held that "[a] 10-day suspension from school is not *de minimis,* in our view, and may not be imposed in complete disregard of the Due Process Clause."

Recognizing students' important interest in pursuing their educations, Congress provided the right to counsel to disabled students in hearings under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq. In 2013, North Carolina became the first state to provide its university students the right to higher counsel in campus non-academic disciplinary hearings. N.C. Gen. Stat. § 116-40.11 (2013). This common-sense measure passed by an overwhelming vote of 112 to 1 in the North Carolina House and by an impressive margin in the Senate. Providing similar access to counsel to North Dakota's public college and university students facing suspensions or expulsion, and to student organizations subject to serious sanctions, is necessary to ensure basic fairness. S.B. 2150 cleared the North Dakota Senate by a vote of 45 to1.

WHAT'S AT STAKE

Hundreds of thousands of North Dakotans rely on higher education as a path to career advancement. Students whose academic careers are put in jeopardy during disciplinary hearings are having not just their degree but their entire careers put at risk.

Meaningful due process must be provided to ensure that students are only punished when it is truly warranted and after a fair and reliable hearing procedure. Providing accused students with access to counsel where serious penalties are at stake will help secure the fundamental fairness of those proceedings and ensure that no student's career is unfairly cut short without meaningful due process.

CALL TO ACTION

The North Dakota Legislative Assembly should pass S.B. 2150 requiring public institutions of higher education to provide meaningful due process in the form of access to counsel to students and student organizations subject to serious discipline.

ABOUT FIRE

The Foundation for Individual Rights in Education defends and sustains individual rights at America's colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

In case after case, FIRE secures favorable resolutions for these individuals who continue to be challenged by those willing to deny fundamental rights and liberties within our institutions of higher education. In addition to individual case work, FIRE works nationally to inform the public about the fate of liberty on our campuses.

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FIRE
Foundation for Individual Rights in Education

Chairman David Hogue
Senate Judiciary Committee
Sent By Email

January 25, 2015

Dear Chairman Hogue and members of the Senate Judiciary Committee:

I am an attorney and the Legislative & Policy Director for the Foundation for Individual Rights in Education (FIRE; thefire.org), a nonpartisan, nonprofit organization dedicated to defending core constitutional rights on our nation's university campuses. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity.

I write to you today to voice FIRE's strong support of SB 2150. This legislation provides university students facing serious, non-academic disciplinary charges the right to be represented by an attorney or other advocate of the student's choosing in a campus hearing. This legislation is sorely needed because today's colleges and universities operate what amounts to their own parallel justice system while failing to provide the meaningful due process protections guaranteed in our nation's courts. Universities throughout the Commonwealth hold hearings for a wide range of serious offenses including theft, harassment, assault, drug and weapons possession, stalking, and rape. Until SB 2150 is passed, students in North Dakota's public universities accused of such serious misconduct will continue to be forced to represent themselves—alone—against experienced and professionally trained deans, administrators, and university attorneys in proceedings that fail to guarantee core components of the right to due process. The status quo is fundamentally unfair and legislative action is required to rectify it.

The stakes are very, very high; the results of these hearings dramatically change the course of students' lives. An expulsion for criminal activity will have life-long consequences for a student's education and professional career. Such a finding impedes a student's ability to secure jobs—even jobs that do not require a college degree. After all, why should an employer take a chance on a "proven" rapist or thief? Complicating matters further, nothing prevents criminal prosecutors from using statements made in college courts against the accused in criminal proceedings. Without a lawyer during these campus hearings, students may unknowingly waive Fifth Amendment rights.

Today, North Dakota's colleges and universities prohibit students from getting the professional assistance and advice they need during disciplinary hearings. Some institutions may allow a lawyer to attend the hearing, but prohibit them from participating in the proceedings. Others ban them altogether. (Although in July Federal regulations that will require colleges to allow students the right to have lawyers present, but not necessarily actively participate during Title IX hearings goes into effect). The universities, on the other hand, are free to send as many attorneys as they wish to prosecute their case against the student.

The bipartisan SB 2150 would end this inequity. It is long overdue.

If college tribunals were adequately protecting students' rights, this bill might not be necessary. But that is not the case. FIRE learns of shocking due process abuses from college students across the nation every year. At the University of North Dakota, for instance, undergraduate student Caleb Warner was accused of sexual assault. Upon investigating, the local police refused to charge him with any crime. In fact, after the evidence they gathered overwhelmingly indicated that Warner's accuser

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had been untruthful, the police charged her with filing a false report. Yet the university still found Warner guilty—a decision it only vacated a year and a half later after negative national media attention.

There are thousands of "Caleb Warners" throughout the country—and undoubtedly many in North Dakota—who would benefit from the meaningful due process this bill would provide to the campus disciplinary process. Denying voting-age adults the right to be represented by an attorney when their educations and careers are on the line simply doesn't make sense. Although, FIRE doubts that SB 2150's implementation would actually cost the state anything close to the 2.6 million dollars estimated by the fiscal note (after all how many students do the colleges plan on subjecting to expulsion hearings each year?), that price is well worth it, when one considers the serious risk of harm to students' futures when they are sent into these hearings to fend for themselves.

When similar legislation was passed by an overwhelmingly bipartisan vote in 2013 in North Carolina, campus administrators made a misplaced argument about the "educational" nature of campus disciplinary hearings. Upholding the vital importance of fundamentally fair hearings and the need to protect student rights, the North Carolina legislature rejected this claim and recognized that when a student is accused of a crime and subject to expulsion if found responsible, the process is undeniably punitive. The North Carolina legislature has been noted for its partisan division as of late, but it was hardly divided on this question—the right to counsel bill passed by a resounding vote of 112 to 1.

The law has been in effect in North Carolina since July of 2103. To date, there have been no reports and there is no evidence that providing students the right to the assistance of lawyers or the advisors of their choice in these hearings has disrupted or prevented any institutions from conducting hearings. Simply put, the sky has not fallen, as the bill's opponents loudly predicted.

The most common argument against providing this right to students is one advanced primarily by higher education institutions and their student conduct administrators. They assert that students benefit from the lack or representation because it makes them defend and take responsibility for their actions and learn from the experience. As a result, they argue, the process is "educational" and "pedagogical," not adversarial and disciplinary.

This argument is wrong for multiple reasons. First, it assumes that the accused student is in fact guilty of the charge. An innocent student has committed no wrongdoing for which he or she needs to take responsibility. Still more importantly, this argument vastly overstates the educational value of the proceedings. Expulsion hearings over accusations of serious criminal activity are not educational proceedings. They are plainly punitive. Severing one's access to higher education is not a "lesson" that any student should be taught if it is not the product of a fair proceeding.

Another common argument advanced by student conduct administrators against legislation is that providing college students with the right to hire counsel would compromise universities' ability to comply with their obligations under federal law, including Title IX, the Violence Against Women Act (VAWA), and the Clery Act. This argument is also plainly incorrect. The main thrust of this specious claim is that allowing students to have access to an attorney or the advisor of their choice may delay the judicial process, and, in the context of sexual misconduct hearings, may require the institution to supply a lawyer to the accusing student. Both arguments are without merit. Nothing in SB 2150 changes the substance or timeline of any campus judicial hearing. Nor does SB 2150 mandate the adoption of any rules of evidence, provide the right to discovery, or supply any additional grounds for unwarranted delay.

To be clear, Department of Education guidance on Title IX simply states that if a student accused of sexual misconduct is allowed an attorney or advisor in the process, that same right must be afforded to the complainant. So long as universities do not restrict complainant's access to attorneys, they will be

fully compliant with both SB 2150 and Title IX, as well as all other federal obligations. It is important to note that no law—federal, state or local—anywhere in the country prohibits universities from allowing accused students to have legal representation. In fact, some colleges already allow such access. What's more, institutions and student governments nationwide—like the University of Colorado - Boulder, the University of California - San Diego, and the State University of New York - University at Albany—voluntarily provide legal resources to students facing disciplinary sanctions to make sure that their procedural rights are honored.

SB 2150 does not require that universities pay for student representation at hearings. Nor does it require students be offered the opportunity to be represented by lawyers when they face charges of academic misconduct like cheating or plagiarism. By exempting those cases, the legislation properly strikes the balance between hearings that are truly educational in nature and those that are punitive.

SB 2150 is necessary because it is simply unreasonable to expect 18- or 19-year-old students acting alone to competently answer serious charges posed by deans and administrators with decades of professional experience acting as judge, jury, and executioner for campus crimes. FIRE notes that this imbalance is particularly exacerbated for students from disadvantaged backgrounds. While wealthier students who have lawyers or other professionals for parents may confidently face these tribunals, first-generation students or those who rely on substantial financial aid have the added burden of knowing that their livelihoods—and often the dreams of their families—are on the line. For those students, having legal representation during the few hours of a hearing could make a difference that will last decades.

FIRE urges you to support this critically important bill.

Thank you for your attention to our support for SB 2150. Please do not hesitate to contact me if I can be of any assistance.

Respectfully submitted,

Joseph Cohn

Joseph Cohn
Legislative and Policy Director

cc: Members of the Senate Judiciary Committee

Grand Forks Herald

our OPINION

OUR OPINION: Accused students need due-process rights

By Tom Dennis on Jan 14, 2015

You're a college student accused of sexual assault, and your disciplinary hearing at a North Dakota University System campus is under way.

If you say nothing, that can be used against you. But if you speak up, that can be used against you, too - especially later. For if criminal charges result from the accusation, then everything you say at the hearing will be admissible in court.

What to do?

Start here: Get a lawyer. And thank a few key North Dakota lawmakers, assuming their proposal to give students in such situations the right to an attorney becomes law.

Over the past few years, campuses and American society have grown a lot more sensitive to people who claim to have been sexually assaulted. That's good, because some of the changes were long overdue. Too many victims of sexual assault told of dismissive investigators, rude questioning, extreme reluctance to go after star-athlete suspects and other deep procedural flaws.

But now, Lady Justice's scale has tipped too far; and on campus, it's the accused who too often are being mistreated. Under pressure from Washington, campuses have set up systems that can resemble kangaroo courts, complete with investigators doubling as judges and juries, minimal standards of finding guilt, no power to cross-examine witnesses and limited ability to appeal.

These procedures raise the odds of innocent students being found guilty and then expelled. That's an outcome that can ruin lives.

And that, in turn, is why the accused in such proceedings deserve due-process rights. These start with the rights to an attorney and to appeal, which Senate Bill 2150 provides.

The bill - whose sponsors include Sen. Ray Holmberg and Rep. Lois Delmore, both of Grand Forks - lets a student not only hire an attorney but also have that attorney fully participate in the proceedings, something he or she could not do today.

Also, the bill lets students facing the most serious punishments appeal to the district court. That, too, seems appropriate, given that the consequences of being wrongfully suspended or expelled could be so dire.

These changes aren't meant to return sexual-assault victims to the Dark Ages of indifference or contempt. Instead, they're meant to bring balance: to recognize that increased sensitivity to accusers' concerns also warrant heightened sensitivity to the rights of the accused.

And North Dakota lawmakers aren't alone in calling for this balance. In October, 28 members of the Harvard Law School faculty complained of their school's even more one-sided procedures in a letter to the Boston Globe.

"Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused and are in no way required by Title IX law or regulation," the letter states.

Harvard Law Professor Nancy Gertner is one of those 28 faculty members as well as a retired federal judge. In a recent column, she describes how she sees the issue:

"However flawed, the way we test narratives of misconduct - on whichever side - is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder," Gertner writes.

"While we know ... that even these 'tests' can produce wrongful convictions, they are at least more likely to produce reliable results than the opposite - a one-sided, administrative proceeding, with a single investigator, judge, jury and appeals court."

The Legislature should approve and the governor should sign Holmberg and Delmore's bill.

Grand Forks Herald

our OPINION

OUR OPINION: 'Educational' process can teach cruel lesson

By Tom Dennis on Feb 1, 2015

When colleges defend the student-discipline status quo, they often claim the process is meant to be "educational."

Chris Wilson, attorney for the North Dakota University System in Fargo, does this in his testimony on today's editorial page: Discipline at an educational institution is aimed, in part, at "educating the misbehaving student through a process of determining responsibility and imposing appropriate discipline."

The Association for Student Conduct Administration echoed this view in a 2014 letter: "...(T)he most immediate and consuming responsibility (of the conduct process and office) is to educate students about their decision-making strategies and the impacts of their behaviors, remind them of the standards of the institution, and to impose consequences when appropriate to protect the campus community and to maximize the educational impact."

But these views describe exactly why students charged with serious disciplinary infractions need lawyers, because campus leaders seem primed to jump from the "charges" to the "consequences," using as their springboard the presumption of guilt.

How else can one interpret language such as "educating the misbehaving student" and "educat(ing) students about their decision-making strategies and the impacts of their behaviors"?

What about those accused students who did not misbehave, and used "decision-making strategies" that were ethical and sound?

If the conduct process could be trusted to make those findings, America would not be having this debate. But that's not happening reliably enough.

Instead, too many students who may be entirely innocent have been suspended or expelled. And no wonder, given that the process explicitly uses lesser standards of determining guilt, shortchanges appeals, limits cross-examination and — yes — prevents lawyers from fully advocating on students' behalf.

The only "education" a wrongly expelled student gets is in the gross miscarriage of justice. That's the circumstance SB 2150 is trying to prevent.

Society's renewed attention to sexual assaults on campus is right, proper and long overdue. But being accused is not the same as being guilty; and as Harvard Law Professor Nancy Gertner has written, "However flawed, the way we test narratives of misconduct — on whichever side — is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder."

In fairness to students whose futures hang in the balance, those are the protections that high-stakes disciplinary proceedings must offer.

THE WALL STREET JOURNAL.

Yes Means Yes—Except on Campus

The feds tip the scales against due process in sexual misconduct cases.

By HARVEY A. SILVERGLATE

For a glimpse into the treacherous territory of sexual relationships on college campuses, consider the case of Caleb Warner.

On Jan. 27, 2010, Mr. Warner learned he was accused of sexual assault by another student at the University of North Dakota. Mr. Warner insisted that the episode, which occurred the month prior, was entirely consensual. No matter to the university: He was charged with violating the student code and suspended for three years. Three months later, state police lodged criminal charges against his accuser for filing a false police report. A warrant for her arrest remains outstanding.

Among several reasons the police gave for crediting Mr. Warner's claim of innocence was evidence of a text message sent to him by the woman indicating that she wanted to have intercourse with him. This invitation, combined with other evidence that police believe indicates her untruthfulness, has obvious implications for her charge of rape.

Nevertheless, university officials have refused to allow Mr. Warner a re-hearing—much less a reversal of their guilty verdict. When the Foundation for Individual Rights in Education (FIRE), a civil liberties group of which I am board chairman, wrote to University President Robert O. Kelley to protest, the school's counsel, Julie Ann Evans, responded. She wrote that the university didn't believe that the fact that Mr. Warner's accuser was charged with lying to police, and has not answered her arrest warrant, represented "substantial new information." In any event, she argued, the campus proceeding "was not a legal process but an educational one."

Six weeks before FIRE received this letter, Russlynn Ali, assistant secretary for the Office for Civil Rights in the Department of Education, sent her own letter to every college and university in the country that accepts federal money (virtually all of them). In it, she essentially ordered them to scrap fundamental fairness in campus disciplinary procedures for adjudicating claims of sexual assault or harassment.

Ms. Ali's April 4 letter states that "in order for a school's grievance procedures to be consistent with the standards in Title IX [which prohibit discrimination on the basis of sex in any educational institution receiving federal funds], the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred)." This institutionalizes a low standard previously eschewed by most of the nation's top schools. It also sends the message that results—not facts—matter most. Such a standard would never hold up in a criminal trial.

Associated Press
Caleb Warner

Following this outrageous diktat, Cornell University lowered its evidentiary burden in sexual assault cases. Now, determining whether an incident constitutes sexual violence is based on the "preponderance of the evidence" standard, instead of the school's prior "clear and convincing evidence" test. Stanford followed suit—in the middle of one student's sexual misconduct hearing. He was promptly found guilty and suspended for two years.

When Yale administrators received the government's letter, the university was under federal investigation for permitting gender discrimination on campus. The next month, on May 17, Yale announced that it would institute a five-year suspension of a fraternity that had engaged in a puerile but harmless initiation. Parading around campus, blindfolded pledges were told to shout tasteless slogans like "No means yes, yes means anal."

The university deemed this a sufficiently serious species of gender-based discrimination to justify official censorship. This, despite its "paramount obligation"—Yale's words—to uphold freedom of expression. And Yale, too, lowered its previous, higher evidentiary standard in sexual assault cases to the bottom rung.

Codes banning "offensive" speech in the name of protecting the sensibilities of what are commonly designated historically disadvantaged groups—and the campus kangaroo courts that enforce them—have long threatened free expression and academic freedom. While real-world courts have invalidated many of these codes, the federal government has now put its thumb decisively on the scale against fairness on issues of sexual harassment and assault.

Caleb Warner now goes without a diploma and carries with him the stigma of a sexual predator. Unfortunately, the government's policy ensures that his will not be a unique case.

Mr. Silverglate, a lawyer, is the author of "Three Felonies a Day: How the Feds Target the Innocent" (Encounter Books, 2009). He is also the chairman of the board of directors of the Foundation for Individual Rights in Education.

What is FIRE?

The Foundation for Individual Rights in Education (FIRE) is a nonprofit educational foundation based in Philadelphia and Washington, D.C. FIRE's core mission is to defend and sustain individual rights at America's colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE is strictly nonpartisan; its staff, Board of Directors, and Board of Advisors comprise individuals across the political and ideological spectrum.

The Problem On Campus

Our nation's colleges and universities have become increasingly hostile towards free speech and basic rights. FIRE receives pleas for help each year from an alarming number of students and faculty members from across the nation who are suffering censorship, facing unfair punishment under blatant double standards, and experiencing egregious infringements of their individual liberties.

The silencing of speech on campus poses serious problems for our entire system of higher education and for our country as a whole. The freedom to dissent and to explore new ways of thinking is essential to pursuing knowledge and truth. If we fail to teach the next generation how to think critically, they will choose to censor rather than challenge ideas with which they disagree—a result that threatens the future of our free society. FIRE's work provides a necessary foundation for ensuring that this freedom does not disappear.

How We Get Results

FIRE defends liberty for students and faculty members at colleges across America, primarily through public exposure of abuses. Following Justice Louis Brandeis' famous maxim, "Sunlight is the best of disinfectants," FIRE has shown time and time again that college administrators cannot defend in public the abuses they commit in private. In case after case, FIRE brings about favorable resolutions for individuals beleaguered by those willing to deny fundamental rights and liberties within our institutions of higher education. When necessary, FIRE turns to litigation to achieve justice on campus. And in order to avoid future infringements of basic rights, FIRE employs robust educational programming for students, professors, and administrators.

DEFENSE

FIRE defends individual students, professors, and campus groups whose fundamental civil liberties have been violated. We work through outreach to administrators, the strategic use of publicity to generate public attention and pressure, and, when necessary, the coordination of legal counsel and action in the courts. FIRE has secured hundreds of victories for students and faculty members since its founding.

EDUCATION

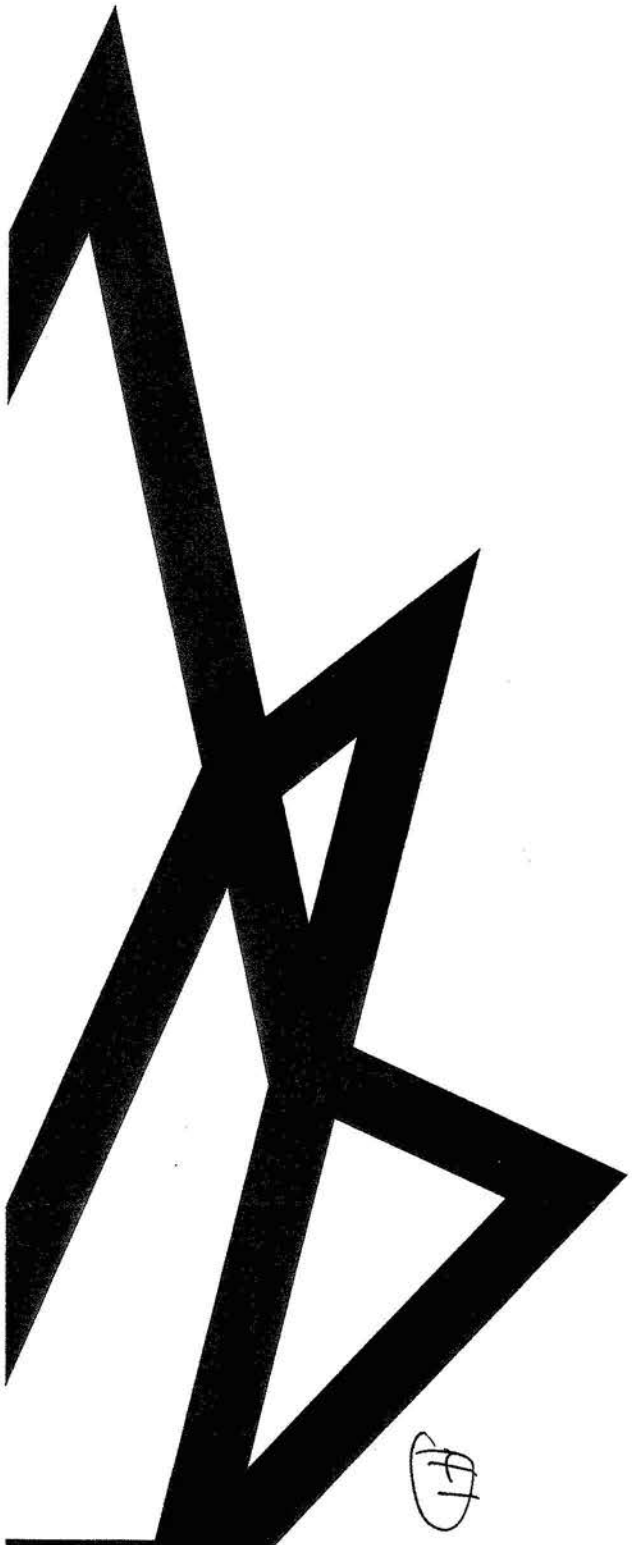
FIRE educates the public about the state of liberty on our nation's campuses, raising awareness and generating public pressure for reform through media outreach, videos, and publicity efforts. FIRE's media engagement, multimedia and social media outreach, and print publications reach millions of Americans every year, sparking critical discussions of key campus issues and First Amendment concerns.

OUTREACH

FIRE coordinates with thousands of students and faculty members dedicated to advancing individual rights on their campuses. The **FIRE Student Network** works to safeguard liberties by generating on-campus reform, spreading awareness among students and faculty members on campus, and petitioning administrators for change. Outreach programs such as annual student conferences, our high school essay contest, and the summer internship program teach students the philosophy of liberty and provide the knowledge and tools to take action on campus.

REFORM

FIRE works to proactively and systematically challenge campus policies that violate students' and faculty members' fundamental rights through in-depth research and legal and public advocacy. FIRE's **Stand Up For Speech Project** is an unprecedented national litigation effort to eliminate unconstitutional speech codes from our nation's public universities. FIRE aims to reset the incentives that currently push colleges towards censoring student and faculty speech.



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Appendix VII: Student Relations Commitee (SRC)

INTRODUCTION

Refer to Definitions in Section 2 (/student-affairs/code-of-student-life/section-2.cfm) (Conduct Regulations and Procedures).

The Student Relations Committee (SRC) consists of a group of students and faculty, appointed by the Vice President for Student Affairs (VPSA), trained, and called upon to hear cases of alleged violations of the Code of Student Life (Code). It is the highest disciplinary body of the University and has the sole authority to suspend a student or student organization.

a student or student organization has allegedly committed a violation that may warrant suspension from the ersity community, a panel of SRC members shall conduct a hearing to determine if the violation has occurred. If the student or student organization is found in violation of the Code, appropriate sanctions are determined by the hearing panel.

The VPSA shall approve procedural rules for the conduct of SRC hearings. All procedures will apply to students or student organizations.

Introduction (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-intro.pdf)

VII-1 Types of SRC Hearings (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-1.pdf)

VII-2: Hearing Panel Membership (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-2.pdf)

VII-3: Advisors (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-3.pdf)

VII-4: Procedures for a Full Hearing (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-4.pdf)

VII-5: Emergency Suspension Review Hearing (/student-affairs/code-of-student-life/_files/codepdfs/appendix/vii/vii-5.pdf)

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APPENDIX VII: STUDENT RELATIONS COMMITTEE (SRC)

INTRODUCTION

Refer to Definitions in Section 2 (Conduct Regulations and Procedures).

The Student Relations Committee (SRC) consists of a group of students and faculty, appointed by the Vice President for Student Affairs (VPSA), trained, and called upon to hear cases of alleged violations of the *Code of Student Life* (*Code*). It is the highest disciplinary body of the University and has the sole authority to suspend a student or student organization.

When a student or student organization has allegedly committed a violation that may warrant suspension from the university community, a panel of SRC members shall conduct a hearing to determine if the violation has occurred. If the student or student organization is found in violation of the *Code*, appropriate sanctions are determined by the hearing panel.

The VPSA shall approve procedural rules for the conduct of SRC hearings. All procedures will apply to students or student organizations.

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APPENDIX VII: STUDENT RELATIONS COMMITTEE (SRC)

VII-1 TYPES OF SRC HEARINGS

Full Hearing for an accused student: A hearing panel ("Panel") of committee members is convened to consider cases of a very serious nature which could lead to a sanction of suspension from the University. After hearing information from all parties, including the accused student; witnesses; complainant, if any; and the Judicial Officer; the Panel decides whether the student is responsible for a violation of the *Code*, using a "more likely than not" standard. If the student is found responsible for violation(s) of the *Code*, the Panel will also determine the appropriate sanction for the student.

Emergency Suspension Review Hearing for an accused student: The purpose of an Emergency Suspension Review Hearing is to determine if an Emergency Suspension, as outlined in the *Code*, Section 3-C, Option #1, should remain in effect until the matter is resolved.

Full Hearing for a student organization: A Panel is convened to consider cases of a very serious nature which could lead to a sanction of suspension from the University. After hearing information from all parties, including the accused student organization; witnesses; complainant, if any; and the Judicial Officer; the Panel decides whether the student organization is responsible for a violation of the *Code*, using a "more likely than not" standard. If the student organization is found responsible for violation(s) of the *Code*, the panel will also determine the appropriate sanction for the student organization.

Emergency Suspension Review Hearing for a student organization: The purpose of an Emergency Suspension Review Hearing is to determine if an Emergency Suspension, as outlined in the *Code*, Section 3-C, Option #1, should remain in effect until the matter is resolved. All references within Section 2, Section 3, and Appendix VII of the *Code* to "student"(s) include both a student acting as an individual and to students acting in a group and/or a student organization, unless otherwise noted herein.

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VII-2 HEARING PANEL MEMBERSHIP

A hearing panel for a Full Hearing shall normally consist of three faculty members, one of whom is a SRC Chair, and three students from the SRC. When that composition of members is not available (e.g., summer session, university breaks, or other exceptional circumstances), the Panel size shall be determined by the VPSA or designee. The Panel size for an Emergency Suspension Review Hearing shall be determined by the VPSA or designee.

Composition of **any** SRC Panel shall include a minimum of three members from the SRC with at least one of those members being a student.

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VII-3 ADVISORS

SRC Advisor: An Advisor to the SRC shall be present at all SRC hearings in order to see that the process is followed and advise the SRC and the SRC Chair on procedural questions. The SRC Advisor shall also assist the SRC Chair in identifying which information is relevant to the hearing panel.

Process Advisor: The SRC Advisor will identify a Process Advisor from the University for the accused student. The SRC Advisor will also identify a Process Advisor for the complainant student when harassing or discriminatory actions are alleged. The roles of a Process Advisor are to help the respective student understand the hearing process, to assist him/her in preparing for the hearing, and to serve in a support capacity during the hearing. The Process Advisor has no standing in the proceedings, does not represent the student in the hearing process, does not have speaking privileges during a hearing, and must not disrupt the hearing. The Process Advisor will be identified in the Hearing Notification Letter.

Personal Advisor: The accused, and if applicable, complainant, students may each have one Personal Advisor present. This advisor may be someone chosen at the student's expense. The advisor may be an attorney; in such cases, note that Guidelines for Attorneys who accompany accused students are available in the Dean of Students Office. Included in these guidelines is a requirement of a five-business day notice to the University of a student's intent to be accompanied by an attorney.

A student should select a Personal Advisor whose schedule allows attendance at the previously scheduled date and time for the hearing. Delays will not normally be allowed due to the scheduling conflicts of an advisor. A Personal Advisor does not have speaking privileges during a hearing, must not disrupt the hearing, and cannot be called as a witness during any phase of the process. If the student is not in attendance, the Personal Advisor may not be in attendance.

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APPENDIX VII: STUDENT RELATIONS COMMITTEE (SRC)

VII-4 PROCEDURES FOR A FULL HEARING

A. Prior to the Hearing

The Dean of Students or designee shall confer with the SRC Advisor to establish a time, date, and place for the hearing, and notify the accused student of such in writing. The accused student shall receive the Hearing Notification Letter at least seven business days prior to the hearing date. A student may request in writing that an earlier date be set. The SRC Chairperson, for good cause, may postpone the hearing and notify all interested persons of the new hearing date, time, and place. The SRC Chair, in consultation with the SRC Advisor, may refuse to conduct a hearing when in their determination there is insufficient information for a Panel to consider or the alleged violation would not merit suspension as a sanction. A Senior Student Conduct Administrator may then assign such a case to any Student Conduct Administrator for resolution. Section 2-V(a) and Section 2-V(b) of the *Code.*

B. The Hearing Notification Letter to the accused student shall:

1. Direct the accused student to appear at the date, time, and place specified.
2. Include alleged violations of the *Code.*
3. Advise the student that information provided to the Panel will be included in the deliberations.
4. Advise the student of the rights specified in Appendix VII-IV-C of the *Code.*
5. Include a notice to student to provide the following information to the SRC Advisor at least five business days before the hearing: whether an attorney will be the student's Personal Advisor, and whether the student will request that the hearing be an open hearing.
6. Include a notice to the student to provide the following information to the SRC Advisor and the Dean of Students at least at least two business days before the hearing: a list of witnesses to be called on behalf of the student, the name of any advisor to the student who will be present at the hearing, and copies of any documents or other materials to be presented by the student at the hearing.
7. Contain the name of the person appointed to act as chairperson of SRC.
8. Contain the name of the person appointed to act as Process Advisor for the student.
9. Contain the names of witnesses being called by the Judicial Officer, and a description of information, materials, and charges that will be offered against them.
10. Contain a redacted copy of the complaint.

11. Provide a copy of the Retaliation Prohibited statement (Section 1-29 of the *Code*).

12. Notify the student that if s/he chooses to serve as a witness, the student may be questioned by the Judicial Officer, the complainant student, and the Panel.

C. Rights of the Accused Student

1. To a closed hearing unless the accused student and the Judicial Officer agree to an open hearing.

2. The opportunity to appear, alone or with a Process Advisor and/or Personal Advisor.

3. To challenge one member of the Panel for bias at the start of the hearing.

4. To know the identity of each witness who will speak to the alleged events.

5. To serve as a witness, or not; to call witness(es); submit documentary and other information; offer information; and speak in his/her own behalf.

6. To question each witness, for the purpose of clarification.

7. To have access to the record of the hearing after all proceedings are complete.

8. To appeal the decision of the SRC.

D. When applicable, the Hearing Notification Letter to the complainant student shall:

1. Inform the student of the date, time, and place specified for the hearing.

2. Advise the student that information provided to the Panel will be included in the deliberations.

3. Advise the student of the rights specified in Appendix VII-IV-E of the *Code*.

4. Include a notice to student to provide to the SRC Advisor at least five business days before the hearing, whether an attorney will be the student's Personal Advisor.

5. Contain the name of the person appointed to act as chairperson of SRC.

6. Provide a copy of the Retaliation Prohibited statement (Section 1-29 of the *Code*).

7. Notify the student that if s/he chooses to serve as a witness, the student may be questioned by the Judicial Officer, the accused student, and the Panel.

E. **Rights of the Complainant Student**

In such cases when an act of violence or harassment is alleged, the complainant student has the following rights:

1. To receive a notice of the hearing.
2. The opportunity to appear, alone or with a Process Advisor and/or Personal Advisor.
3. To request accommodations during the hearing to increase his/her comfort or sense of safety in providing information.
4. To speak for him/herself.
5. To know the outcome of the hearing.
6. To appeal the decision of the SRC.

F. **Full Hearing Process**

1. Persons in attendance include some or all of the following:
   a. the accused student, and his/her Process Advisor and/or Personal Advisor.
   b. University General Counsel, when an attorney is present.
   c. Panel members, the SRC Chair, the SRC Recorder, and the SRC Advisor.
   d. Complainant and his/her Personal Advisor.
   e. Judicial Officer
   f. Any other employee of the University whose presence is required for purposes of safety, logistics, or training, at the discretion of the Chair.
2. The hearing is convened by SRC Chair. Notification is made to all parties that the hearing is being audio recorded. This recording represents the sole official verbatim record of the SRC Hearing and is the property of the University of North Dakota.
3. The hearing may proceed in the absence of the accused student. Such an absence is not to be interpreted as an admission of responsibility nor a basis for additional disciplinary action. The University will be required to document that a reasonable attempt has been made to to provide notification of the hearing to the student.

4. The accused student, the complainant student, the Judicial Officer, and each witness will sign an honesty oath, confidentiality statement, and retaliation prohibited statement. A confidentiality statement is read.

5. All persons in the room are introduced.

6. The accused student and the Judicial Officer are given the opportunity to challenge one member of the panel for bias.

7. The hearing shall be closed to the public unless the accused student and the Judicial Officer agree to an open hearing.

8. The SRC Chair reads the complaint. These alleged violations are read directly from the Hearing Notification Letter which was sent to the accused student prior to the SRC Full Hearing. The accused student responds whether he/she accepts responsibility for any, all, or none of the alleged violations of the *Code*.

9. If the accused student accepts responsibility for all of the alleged violations of the *Code*, the hearing will proceed directly to the sanctioning process. Prior to proceeding to the sanctioning phase, the student will be given an opportunity to provide additional information related to the violation(s) and acceptance of responsibility. Questions of clarification may be asked by the Judicial Officer or Panel members.

10. If the accused student does not accept responsibility all of the alleged violations of the *Code*, the hearing will proceed on the remaining alleged violations.

    a. Brief opening statements are made by the Judicial Officer and the accused student.

    b. The hearing continues with the Judicial Officer and the accused student presenting information from witnesses, documentation, or other evidence related to the incident. Witnesses may be questioned by the Judicial Officer, the accused student, and by the Panel.

    c. The Judicial Officer and accused student present closing statements.

    d. Following these closing statements, the Panel will move into deliberations to decide whether it was "more likely than not" that a violation of the *Code* took place. Only Panel members may be present in the room during deliberations. If during deliberations, the Panel believes it needs additional information, it may reopen the hearing by providing notice to all parties of its intent.

    e. When the Panel has concluded their deliberations, the SRC Recorder shall record the decision.

f. The Chair will call the hearing back into session. The Chair will announce the Panel's decision for each alleged violation. If the accused student is not found responsible for any of the alleged violations, the hearing concludes. If the accused student is found responsible for one or more violations, the hearing will move into the sanctioning phase.

11. During the sanctioning phase, the Panel will hear information to assist in determining appropriate sanction(s) for the student who is in violation of the *Code* ("student in violation").

    a. The Judicial Officer and the complainant student may present impact statements, expert witnesses, and character witnesses. Questions of clarification may be asked of witnesses.

    b. The Judicial Officer shall disclose if the student in violation has had prior violations.

    c. The student in violation may present expert witnesses, character witnesses, and/or documentation on his/her behalf.

    d. Recommendations for sanctioning are presented by the Judicial Officer and the student in violation.

    e. The Panel deliberates and determines sanctions.

    f. The Recorder records the decision.

    g. The student in violation and the Judicial Officer are verbally informed of the decision and sanctions, as well as procedures for appeal following the deliberations.

G. SRC Hearing Decision Letter

A SRC Hearing Decision Letter outlining decisions, any sanctions imposed, and appeal procedures will be sent to the student who was alleged to be in violation of the *Code* within one week after the hearing with copies provided to the VPSA, the Dean of Students, and the SRC Advisor.

In an incident of alleged violence, the complainant1 may be informed verbally of the outcome of the hearing by the Dean of Students or designee, and when allowed by Section 8 - 3 of the *Code*, the complainant is notified in writing of the sanctions.

H. Student Relations Committee Hearing Record

1. An individual student's hearing record is confidential and consists of:

    a. A copy of the SRC Hearing Notification Letter sent to the accused student.

b. All documents, information, and materials admitted in the hearing.

c. The audio recording of the hearing, which is the sole official verbatim record of the SRC Hearing and is the property of the University of North Dakota.

d. A copy of the SRC Hearing Decision Letter.

2. The result of a hearing involving a student organization is not subject to FERPA. The records of student members of student organizations are subject to FERPA. The charges, findings, and sanctions for the student organization will be considered public information. Personally identifiable information will be redacted or omitted from any disclosure document.

3. The Office of Record for SRC Hearings is the VPSA. Records are kept according to the General Records Retention Schedule.

4. Students who wish to review their disciplinary or hearing records may contact the Dean of Students Office to schedule an appointment to conduct the review of these records (*see* Section 8-6-B of the *Code*).

I. Appeal Procedures

The student in violation and the complainant student have the right to appeal the outcome of an SRC Full Hearing.

1. Appeals of a decision made by the SRC are made to the VPSA.

2. Appeals must be made in writing to the VPSA within ten business days after delivery posted date of the SRC Hearing Decision Letter. A notice of appeal shall contain the student's name and contact information, the date of the decision or action, the reason for appeal, and the name of the student's Personal Advisor, if any.

3. An appeal may only be based on the belief that alleged errors committed during the investigation and/or hearing process had a substantial effect on determining if the violation(s) occurred or resulted in inappropriate sanctions.

The specific items for review that may be addressed in a written appeal are the following:

a. Were Procedures for a SRC Full Hearing as listed in Appendix VII of the *Code* followed?

b. Was a procedural error committed? Were the rights of either party violated? Please explain.

c. Were you given an adequate opportunity to make your presentation?

d. Is there any additional information that was unavailable at the time of the hearing that may have affected the outcome of the hearing and/or the sanctions?

4. Filing of a Notice of Appeal suspends the sanctions until the appeal is decided. However, interim action may be taken as outlined in Section 3 of the *Code.*

5. The case will be reviewed by the VPSA or designee who will determine if the action taken involved any one, or a combination of, the following:

The student's rights were violated.

a. The finding of a violation of the *Code* was not substantiated by the information.

b. The sanction(s) was/were too severe for the offense.

c. The decision for the sanction/action was made in an arbitrary or capricious manner.

The disciplinary process is educational in nature and a determination is made by a "more likely than not" standard. A later finding of a court of law does not impact any completed disciplinary process.

6. After reviewing the case materials, the VPSA or designee will decide to either:

a. Resolve the matter administratively, with or without speaking again to the witnesses and/or the parties involved.

b. If the original Panel is available, require that the original hearing be reopened for the presentation of additional information and reconsideration of the decision.

c. Call for a new SRC hearing on the matter with a different Panel, in which case the procedures outlined for Full Hearings will be followed with instructions from the VPSA to observe all student rights, including those identified by the VPSA or designee as having been violated in the original hearing.

7. The VPSA or designee may uphold or lessen the original decision or sanction/action but may not increase the sanction/action imposed by the SRC.

8. The VPSA or designee shall have 21 business days from the receipt date of the appeal in which to issue a written determination on the appeal. Such written determination shall be forwarded to the appealing student; complainant or adjudicated student, if applicable; the Dean of Students; the SRC Chair; and the SRC Advisor.

9. The action of the VPSA or designee shall be final.

J. Compliance with SRC Sanctions

The student in violation is responsible for completing the sanctions imposed by the SRC within the timeframe stated in the SRC Hearing Decision Letter. If a student does not complete the sanctions or violates the sanctions as prescribed, the student will be prohibited from registering.

If a student has already pre-registered and the sanction has not been completed, the student's classes will be canceled.

Student organizations that do not complete the sanctions or violate the sanctions as prescribed will no longer be considered in good standing and will not be entitled to the rights or privileges of student organizations.

K. Reinstatement Following a Suspension

1. Reinstatement for students following a Suspension involves the following procedure:
   a. the suspended student applies in writing to the VPSA for reinstatement.
   b. the VPSA reviews the record and ensures that the conditions (if any) for reinstatement have been satisfied.
   c. the VPSA shall either grant or deny the application. The student status of the complainant student may be a factor among others in determining the reinstatement of the suspended student.
   d. If the VPSA reinstates the suspended student, the student's must still complete the readmission process through the UND Office of the Registrar.
2. Reinstatement for Student Organizations following a Suspension involves the following procedure:
   a. The suspended student organization applies to the Student Policy Committee (SPC) for reinstatement.
   b. The SPC Chair, who may be assisted by other Committee members, reviews the record and ensures the conditions for reinstatement have been satisfied. The Chair or committee may consult with the SRC Chair or SRC Advisor about the completion of the conditions.
   c. The SPC shall either grant the reinstatement or deny the application.

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APPENDIX VII: STUDENT RELATIONS COMMITTEE (SRC)

VII-5 EMERGENCY SUSPENSION REVIEW HEARING

An emergency suspension is considered extraordinary and temporary in nature and subject to a Emergency Suspension Review Hearing ("Review Hearing") by the SRC.

In most circumstances a Panel will be convened within ten business days. However, in extenuating circumstances, the SRC Advisor, with the approval of the VPSA, may grant an extension of that timeframe. All Review Hearings will be scheduled as expediently as possible.

A. Procedures for a Review Hearing

The purpose of a Review Hearing is to hear information from both the student who has been placed under temporary suspension and the Dean of Students Office for consideration in determining if the temporary suspension should remain in effect until the matter is resolved. Final resolution of the matter will include an investigation by the Dean of Students Office and any necessary actions to follow, possibly to include a Full Hearing before the SRC. Under the *Code*, a student may be suspended on an emergency basis for behavior that the Dean of Students determines met at least one of the Criteria for Suspension.

B. Criteria for Suspension:

Student's behavior poses a significant threat of danger and/or injury to self or others,

OR

Student's behavior poses a threat of disruption of the educational process for others,

OR

Student's behavior poses a threat of destruction of property.

C. Prior to the Review Hearing

1. The Dean of Students or designee shall confer with the SRC Advisor to establish a time, date, and place for the hearing.

2. Notice is provided to the accused student by the Dean of Students office. The date, time and place for the Review Hearing will be specified in the Review Hearing Notification Letter.

The Emergency Suspension Review Hearing Notification Letter shall:

a. Direct the accused student to appear at the date, time, and place specified.

b. Include the alleged violations of the *Code*.

c. Provide the name and contact information of the Process Advisor.

d. Advise the student that information provided to the Panel will be included in the deliberations.

e. Advise the student of the following rights:

(i) To a closed hearing unless the accused student and the Judicial Officer agree to an open hearing.

(ii) The opportunity to appear, alone or with a Process Advisor and/or Personal Advisor

(iii) To challenge one member of the Panel for bias at the start of the hearing.

(iv) To know the identity of each witness who will speak to the alleged events.

(v) To serve as a witness, or not; to call witness(es); to submit documentary and other information; to offer information; and to speak in his/her own behalf.

(vi) To question each witness, for the purpose of clarification.
(vii) To have access to the record of the hearing after all proceedings are complete.

f. Advise the student that if s/he chooses an advisor who is an attorney that Guidelines for Attorneys who accompany accused students are available in the Dean of Students Office. Included in these guidelines is a requirement of a five-business day notice to the University of a student's intent to be accompanied by an attorney.

D. Review Hearing Process

The accused student, the Judicial Officer, and each witness will sign an honesty oath, confidentiality statement, and Retaliation Prohibited statement prior to the hearing.

The Chair will convene the hearing at the designated time and location.

The Panel may proceed with a hearing in the absence of the accused student. Such an absence is not to be interpreted as an admission of responsibility nor as a basis for additional disciplinary action. The University will be required to document that a reasonable attempt has been made to provide notification of the hearing to the student.

The accused student and the Judicial Officer are given the opportunity to challenge one member of the Panel for bias. A confidentiality statement is read. The hearing shall be closed to
the public unless the Judicial Officer and the accused student agree to an open hearing.

The SRC Chair will read the complaint as included in the Review Hearing Notification letter sent to the accused student by the Dean of Students.

The Judicial Officer presents the reason for emergency suspension.

Witnesses may be called to offer testimony for consideration in determining if the emergency suspension should remain in effect until the matter is resolved. Any one of Criteria for
Suspension is sufficient for continuing the suspension pending further investigation. The Judicial Officer, the accused student, and Panel members will have an opportunity to question the witnesses.

The accused student may make a statement or call witnesses to offer testimony. The accused student, Judicial Officer, and Panel will have an opportunity to question the witnesses.

Members of the Panel deliberate and determine if the Emergency Suspension should remain in effect until the matter is resolved. After the Panel makes their determination, the SRC Chair and the SRC Advisor will meet with the accused student to announce the decision.

E. Review Hearing Decision Letter

A written notification of the outcome of the Emergency Suspension Review Hearing will be sent to the accused student within one week following the preliminary hearing, with copies provided to the VPSA, Dean of Students, and the SRC Advisor.

REVISION RECORD:
August 1, 2012 - Published

HB 2150
3-23-15
PM

Fall 2013 and Spring 2014 Student Disiplinary Data

	BSC	DCB	DSU	LRSC	MaSU	MiSU	NDSCS	NDSU	UND	VCSU	WSC	TOTALS
Conduct Reports/Complaints Received	114	71	121	14	36	165	not provided	1328	1213	11	50	3123
Judicial/Conduct Hearings	9	30	67	14	21	53	190	1245	1083	11	34	2757
Alcohol	6	14	34	8	16	49	150	945	634	10	33	1899
Other Drugs	0	6	3	2	2	2	3	74	81	0	0	173
Violence	0	5	0	0	1	1	13	15	6	1	3	45
Sexual Misconduct	0	1	0	0	1	0	0	3	2	0	1	8
Property Damage	0	0	3	4	1	1	22	0	9	0	1	41
Other	3	0	0	0	0	0	0	0	0	0	0	3
Suspensions	0	5	0	0	0	1	2	3	9	1	0	21
Expulsions	0	2	0	0	0	3	0	0	NA	0	0	5

5 - "all from housing" 2013 Calendar Yr

LRSC - Request was made for them to work on pulling their spring 2014 data and provide it as soon as they can, so that we have consistent data. I stated that we would use the 2013 in the meantime
WSC - Request made for fall 2014 data
UND- does not have expulsion as a sanction for students per its Code of Student Life

#1
SB 2150
3-25-15

15.0596.03001
Title.

Prepared by the Legislative Council staff for
Senator Casper
March 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 2, line 1, after "3." insert "This section does not preclude an institution from affording an immediate appeal process of the initial decision to an institutional administrator or body that did not make the initial decision, on grounds specified by the institution.

4."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 6, after "proceeding" insert "for a period of one year after receiving final notice of the institution's decision"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 18, replace "4." with "5."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in a lessening of the sanction,"

Page 2, after line 22, insert:

"6. This section does not affect the obligation of an institution to provide equivalent rights to a student who is the complainant or victim in the disciplinary proceeding under this section."

Renumber accordingly

#2
SB2150
3-25-15

Proposed Amendments to SB 2150

Page 1, line 10, after "advocate" insert a period

Page 1, line 10, remove ", who may fully participate"

Page 1, remove lines 11 through 12

Page 1, after line 12, insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding. Before the disciplinary proceeding is scheduled, the institution shall inform the student in writing of the student's rights under this section."

Page 1, line 19, after "advocate" insert a period.

Page 1, line 19, remove ", who may fully participate during any disciplinary procedure or"

Page 1, remove line 20

Page 1, remove "violation."

Page 1, after "violation." insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding."

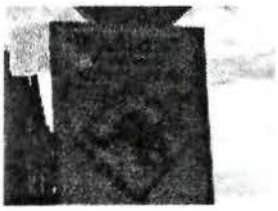
#3
3-25-15
SB2150

Koppelman, Kim A.

From: Holmberg, Ray E.
Sent: Tuesday, January 20, 2015 5:35 AM
Subject: SB 2150 Due Process for College Students in The College Fix

ACCUSED STUDENTS COULD BRING LAWYERS TO CAMPUS HEARINGS UNDER NORTH DAKOTA BILL

by COURTNEY SUCH - FURMAN UNIVERSITY *on JANUARY 20, 2015*



Universities have a long history of prohibiting access to legal representation for students in disciplinary hearings, for matters as serious as sexual assault.

North Dakota would become just the second state in the nation to let students bring a lawyer when they are accused of non-academic infractions, under a bill introduced earlier this month.

The legislation is too late for one student, whose treatment at the hands of the University of North Dakota gave urgency to the cause of disciplinary reform.

SB-2150 would create a new section of state law "relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education," notably UND. It was referred to the Judiciary Committee.
Identical versions were introduced by Republicans Ray Holmberg, Jon Casper* and Kelly Armstrong in the Senate, and Republicans Diane Larson and Mary Johnson and Democrat Lois Delmore in the House.

The bill provides that "any time a student is reported to a disciplinary hearing on campus, which could lead to expulsion or financial loss to that student of tuition or fees, that he has a right to bring in an attorney at his own expense, and have that attorney speak for him or her," Holmberg said in a phone interview with *The College Fix*.
That also includes any campus organization, from student governments to Greek organizations, that can be disciplined, Holmberg added.

"I've been a criminal lawyer for the past 10 years, and I've actually been involved in these hearings at the university level … they encompass pretty significant crimes," Armstrong said in a phone interview with *The Fix*.
"To ask a young college student to walk into these hearings without legal representation is fraught with due process issues and it's fraught with problems that go through the criminal cases," Armstrong added.

The legislation has the support of the *Grand Forks Herald* editorial board, which said that "Lady Justice's scale has tipped too far" in favor of accusers.
Campuses, "under pressure from Washington," have set up "kangaroo courts" that "raise the odds of innocent students being found guilty and then expelled," the editorial said. "That's an outcome that can ruin lives."

'He had to go through that whole process alone'
Holmberg said he took interest when he learned the story of Caleb Warner, a former UND student falsely accused of rape and expelled based on the result of the campus disciplinary proceeding.

Sherry Warner Seefeld, Caleb's mother, created Families Advocating for Campus Equality as a result of the ordeal.

"When the police were done with the investigation, rather than arresting and charging my son, they actually put a warrant out for the arrest of his accuser for filing a false police report," Seefeld told *The Fix*.
Despite that vindication, Caleb Warner was not allowed back at UND and had a damning academic record as a result of the disciplinary finding.

He was advised not to apply to any other universities – an issue the Warner family does not believe would exist if he were allowed representation from the beginning.

"He had to go through that whole process alone … and what you say there can be used in a court of law," Holmberg said: "It just gives the illusion of due process, but it really is not due process."

Condemned by a librarian
Seefeld's organization FACE has brought attention to similar cases across the country, including that of Joshua Strange at Auburn University in 2011, whose ex-girlfriend falsely accused him of rape and assault.

"The university sought to expel me for something I very obviously did not do. It was one of the worst experiences of my life," Strange told *The Fix* in a phone interview.
"Having the lawyers there to actually understand the legal principles would make the world of difference," Strange said. His case was reviewed by a panel "chaired by a librarian" and composed of two humanities professors and a male and female student.

"They basically decided my collegiate future and my future going forward, even though they have no background whatsoever in legal practices or legal doctrine," Strange said. "When I saw that bill come across in North Dakota, I thought it was fantastic."

Armstrong serves on the Judiciary Committee and expects the bill to be put on its schedule within the next few weeks.

"Any mark on your academic record stays with you for the rest of your life and I think it is the right thing to have proper representation at these proceedings," Armstrong said.

The North Dakota legislation is modeled after a North Carolina law approved in 2013, the first of its kind in the nation.

"Legislators from across the political spectrum understood that the stakes in these hearings are too high to allow students to face suspensions or expulsions for non-academic disciplinary charges without legal representation," oe Cohn, legislative and policy director for the Foundation for Individual Rights in Education, said when the North Carolina law took effect.

College Fix *reporter Courtney Such is a student at Furman University.*

*PUBLISHED ARTICLE INCORRECTLY LISTED JIM KASPER AS A SPONSOR. I CORRECTED IT TO JON CASPER

Sent from my iPad

#4
SB2150
3-25-15

Koppelman, Kim A.

From: Holmberg, Ray E.
Sent: Sunday, February 01, 2015 6:58 AM
Subject: GF Herald editorial on SB 2150

Every Sunday The Herald's editorial page does a point / counterpoint examination of an issue and then weighs in with their opinion. Today the issue was the due process for students bill SB 2150.
Sorry about the length but the trees did not die in vain.

Grand Forks Herald
Feb. 1, 2015

OUR OPINION: 'Educational' process can teach cruel lesson

Tom Dennis

When colleges defend the student-discipline status quo, they often claim the process is meant to be "educational."

Chris Wilson, attorney for the North Dakota University System in Fargo, does this in his testimony on today's editorial page: Discipline at an educational institution is aimed, in part, at "educating the misbehaving student through a process of determining responsibility and imposing appropriate discipline."

The Association for Student Conduct Administration echoed this view in a 2014 letter: "...(T)he most immediate and consuming responsibility (of the conduct process and office) is to educate students about their decision-making strategies and the impacts of their behaviors, remind them of the standards of the institution, and to impose consequences when appropriate to protect the campus community and to maximize the educational impact."

But these views describe exactly why students charged with serious disciplinary infractions need lawyers, because campus leaders seem primed to jump from the "charges" to the "consequences," using as their springboard the presumption of guilt.

How else can one interpret language such as "educating the misbehaving student" and "educat(ing) students about their decision-making strategies and the impacts of their behaviors"?

What about those accused students who did not misbehave, and used "decision-making strategies" that were ethical and sound?

If the conduct process could be trusted to make those findings, America would not be having this debate. But that's not happening reliably enough.

Instead, too many students who may be entirely innocent have been suspended or expelled. And no wonder, given that the process explicitly uses lesser standards of determining guilt, shortchanges appeals, limits cross-examination and — yes — prevents lawyers from fully advocating on students' behalf.

The only "education" a wrongly expelled student gets is in the gross miscarriage of justice. That's the circumstance SB 2150 is trying to prevent.

Society's renewed attention to sexual assaults on campus is right, proper and long overdue. But being accused is not the same as being guilty; and as Harvard Law Professor Nancy Gertner has written, "However flawed, the way we test narratives of misconduct — on whichever side — is by questioning the witness, by holding hearings, by sharing the evidence that has been gathered, by giving everyone access to lawyers, by assuring a neutral fact-finder."

In fairness to students whose futures hang in the balance, those are the protections that high-stakes disciplinary proceedings must offer.

#1
SB 2150
3-30-15

15.0596.03003
Title.

Prepared by the Legislative Council staff for
Representative Klemin
March 30, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 1, line 3, after "education" insert "; to provide for the development of a uniform policy; and to provide for a report to the legislative management"

Page 1, line 12, replace "disciplinary" with "rules or"

Page 1, line 12, after the underscored period insert "This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim."

Page 1, line 19, replace "procedure" with "proceeding"

Page 1, line 21, after the first "violation" insert "of the institution's rules or policies"

Page 1, line 23, after the underscored period insert "This right applies to both the student organization that has been accused of the alleged violation and to the the accuser or victim."

Page 2, line 2, remove "disciplinary or conduct"

Page 2, line 3, after "rules" insert "or policies"

Page 2, line 4, remove "disciplinary or conduct"

Page 2, line 4, after "rules" insert "or policies"

Page 2, line 4, replace "may" with "must be afforded an opportunity to"

Page 2, line 5, after "institution's" insert "initial"

Page 2, line 5, remove "the same institutional body that conducted the original"

Page 2, line 6, replace "proceeding" with "an institutional administrator or body that did not make the initial decision for a period of one year 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 accuser or victim"

Page 2, line 7, remove "The student or a student organization must file the appeal no later than one year"

Page 2, remove line 8

Page 2, line 9, remove "discipline from the institution."

Page 2, line 20, replace "In any successful appeal brought under subsection 3," with "If the appeal results in a lessening of the sanction,"

Page 2, after line 22, insert:

"5. 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.

6. 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 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.

SECTION 2. STATE BOARD OF HIGHER EDUCATION TO DEVELOP POLICY - REPORT TO LEGISLATIVE MANAGEMENT. The state board of higher education shall develop and implement a procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the state board of higher education. Before July 1, 2016, the state board of higher education shall report to the legislative management on the status of the implementation of the uniform procedure."

Renumber accordingly

2.1

IV 2
SB 2150
3-30-15

15.0596.03003

FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2150

Introduced by

Senators Holmberg, Armstrong, Casper

Representatives Delmore, M. Johnson, Larson

A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to student and student organization disciplinary proceedings at institutions under the control of the state board of higher education; to provide for the development of a uniform policy; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Disciplinary proceedings - Right to counsel for students and organizations - Appeals.

1. Any student enrolled at an institution under the control of the state board of higher education has the right to be represented, at the student's expense, by the student's choice of either an attorney or a nonattorney 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 ~~disciplinary~~rules or policies. This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim. This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion from the institution. This right does not apply to matters involving academic misconduct. Pass Sentence

2. Any student organization officially recognized by an institution under the control of the state board of higher education has the right to be represented, at the student organization's expense, by the student organization's choice of either an attorney or nonattorney advocate, who may fully participate during any disciplinary ~~procedure~~proceeding or during any other procedure adopted and used by the institution to address an alleged violation of the institution's rules or policies. This right

only applies if the disciplinary proceeding involves a violation that could result in the suspension or the removal of the student organization from the institution. This right applies to both the student organization that has been accused of the alleged violation and to the the accuser or victim.

3. a. Any student who is suspended or expelled from an institution under the control of the state board of higher education for a violation of the ~~disciplinary or conduct~~ rules or policies of that institution and any student organization that is found to be in violation of the ~~disciplinary or conduct~~ rules or policies of that institution ~~may~~must be afforded an opportunity to appeal the institution's initial decision to ~~the same institutional body that conducted the original proceeding~~an institutional administrator or body that did not make the initial decision for a period of one year 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 accuser or victim.

b. ~~The student or a student organization must file the appeal no later than one year after the day the student or the student organization receives final notice of discipline from the institution.~~ The right of the student or the student organization under subsection 1 or 2 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 to the appeal.

c. 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.

4. 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 suspension or expulsion. ~~In any successful appeal brought under subsection 3,~~If the appeal results in a lessening of the sanction, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which had not been previously refunded.

5. 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.

6. 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 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.

SECTION 2. STATE BOARD OF HIGHER EDUCATION TO DEVELOP POLICY - REPORT TO LEGISLATIVE MANAGEMENT. The state board of higher education shall develop and implement a procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the state board of higher education. Before July 1, 2016, the state board of higher education shall report to the legislative management on the status of the implementation of the uniform procedure.

3.1

#3582150
3-30-15

FEDERAL REGISTER

Vol. 79 Monday,
No. 202 October 20, 2014

Part III

Department of Education

34 CFR Part 668
Violence Against Women Act; Final Rule

B.2

information described in paragraph (j)(1) of this section.

(k) *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.* As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that—

(1)(i) Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;

(ii) Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(iii) Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and

(iv) Describes the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking;

(2) Provides that the proceedings will—

(i) Include a prompt, fair, and impartial process from the initial investigation to the final result;

(ii) Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

(iii) Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;

(iv) Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties; and

(v) Require simultaneous notification, in writing, to both the accuser and the accused, of—

(A) The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(B) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;

(C) Any change to the result; and

(D) When such results become final.

(3) For the purposes of this paragraph (k)—

(i) A prompt, fair, and impartial proceeding includes a proceeding that is—

(A) Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;

(B) Conducted in a manner that—

(*1*) Is consistent with the institution's policies and transparent to the accuser and accused;

(*2*) Includes timely notice of meetings at which the accuser or accused, or both, may be present; and

(*3*) Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and

(C) Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

(ii) *Advisor* means any individual who provides the accuser or accused support, guidance, or advice.

(iii) *Proceeding* means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, factfinding investigations, formal or informal meetings, and hearings. *Proceeding* does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

(iv) *Result* means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly referred to as the Family Educational Rights and Privacy Act (FERPA), the result must also include the rationale for the result and the sanctions.

(l) Compliance with paragraph (k) of this section does not constitute a violation of FERPA.

(m) *Prohibition on retaliation.* An institution, or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section.

3. Revise Appendix A to Subpart D to read as follows:

APPENDIX A TO SUBPART D OF PART 668—CRIME DEFINITIONS IN ACCORDANCE WITH THE FEDERAL BUREAU OF INVESTIGATION'S UNIFORM CRIME REPORTING PROGRAM

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program. The definitions for *murder, rape, robbery, aggravated assault, burglary, motor vehicle theft, weapons: carrying, possessing, etc., law violations, drug abuse violations,* and *liquor law violations* are from the "Summary Reporting System (SRS) User Manual" from the FBI's UCR Program. The definitions of fondling, incest, and statutory rape are excerpted from the "National Incident-Based Reporting System (NIBRS) User Manual" from the FBI's UCR Program. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property* are from the "Hate Crime Data Collection Guidelines and Training Manual" from the FBI's UCR Program.

Crime Definitions From the Summary Reporting System (SRS) User Manual From the FBI's UCR Program

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

#4

SB 2150
3.30.15

Proposed Amendments to SB 2150

Page 1, line 10, after "advocate" insert a period

Page 1, line 10, remove ", who may fully participate"

Page 1, remove lines 11 through 12

Page 1, after line 12, insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding. Before the disciplinary proceeding is scheduled, the institution shall inform the student in writing of the student's rights under this section."

Page 1, line 19, after "advocate" insert a period.

Page 1, line 19, remove ", who may fully participate during any disciplinary procedure or"

Page 1, remove line 20

Page 1, remove "violation."

Page 1, after "violation." insert "The attorney may be present and may advise the student but may not participate in the disciplinary proceeding."

5.1

#5
SB 2150
3-30-15

Representative Johnson's Amendment to SB 2150

Page 2, line 29, after "in" insert "the reversal of the decision or"

Page 3, line 3, after the period insert "Nothing in this section requires an institution to use formal rules of evidence in campus disciplinary hearings. Institutions, however, must make good faith efforts to include relevant evidence and exclude evidence which is neither relevant nor probative."