



2022 South Dakota Legislature

House Bill 1312

Introduced by: **Representative Sue Peterson**

1 **An Act to establish due process rights for students during disciplinary proceedings.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 13-53 be amended with a NEW SECTION:**

4 The Board of Regents shall develop policies that afford each student due process
 5 rights during disciplinary investigations and hearings pertaining to an allegation of sexual
 6 misconduct by a student. The policies must provide that:

7 (1) The accused student must receive adequate notice of the allegations, including:

8 (a) Details of the allegations;

9 (b) Provisions of the institution's code of conduct that were allegedly violated;

10 and

11 (c) Copies of any written or photographic evidence;

12 (2) The accused student must be advised of the right to:

13 (a) Consult legal counsel, at the student's expense;

14 (b) Be represented by legal counsel at each stage of the investigation and
 15 hearings, at the student's expense; and

16 (c) Appeal any findings or conclusions of misconduct;

17 (3) Any party to the investigation may question and cross-examine witnesses in order
 18 to establish the veracity of the witnesses, parties, and evidence;

19 (4) Any person who investigates an allegation may not serve as a finder of fact in a
 20 subsequent hearing;

21 (5) Any investigation and subsequent hearing must be conducted in a fair and impartial
 22 manner;

23 (6) Any findings of fact and conclusions stemming from an investigation or any hearing
 24 must be written, sufficiently detailed to permit meaningful review on appeal, and
 25 available to all parties within a specified time frame; and

1 (7) Determinations regarding any violation must be supported by clear and convincing
2 evidence.

3 The policies developed by the board under this section are applicable to each
4 institution under the control of the board.

5 **Section 2. That chapter 13-53 be amended with a NEW SECTION:**

6 Each institution under the control of the Board of Regents shall develop and
7 implement a code of conduct that provides students with due notice regarding standards
8 of behavior, conduct that may be subject to disciplinary action, and the range of
9 disciplinary measures applicable to any violation of the code.

10 The code of conduct must include due process procedures to be followed whenever
11 disciplinary proceedings are conducted against a student. The due process provisions
12 must, at a minimum, provide the protections set forth in section 1 of this Act.

13 **Section 3. That chapter 13-53 be amended with a NEW SECTION:**

14 After a due process hearing, an institution under the control of the Board of Regents
15 may provide for the suspension of a student for conduct that did not occur within the
16 boundaries of the institution but which violated the code of conduct, if the violation has or
17 is reasonably expected to have a direct and immediate impact on the orderly and efficient
18 operation of the institution or the safety of any person attending or employed by the
19 institution.

20 Nothing in this section authorizes an institution to expel a student for such conduct.

21 **Section 4. That chapter 13-53 be amended with a NEW SECTION:**

22 Neither the Board of Regents nor an institution under the control of the board may
23 impose mandatory disciplinary measures for specific violations, unless such measures are
24 required by state or federal law.

25 **Section 5. That chapter 13-53 be amended with a NEW SECTION:**

26 A student may not be placed on a long-term suspension or expelled, except for
27 serious violations of the code of conduct and only if those violations threaten the safety
28 of students, employees, or visitors or if they threaten to substantially disrupt the
29 educational environment.

1 **Section 6. That chapter 13-53 be amended with a NEW SECTION:**

2 If a student organization is accused of violating the code of conduct, the
3 organization has the right, at the organization's expense, to consult with and be
4 represented by legal counsel at each stage of any investigation and hearings.