

A BILL

SECTION 1. SHORT TITLE.

This Act may be cited as the “Campus Equality, Fairness, and Transparency Act.”

SECTION 2. PURPOSE.

Sexual violence can have a devastating impact on victims. Likewise, wrongful determinations of responsibility can have long-lasting, deleterious effects on the falsely accused.

Institutions of higher education need to consider the legitimate interests and rights of both complainants and accused students to assure a fair adjudication process and to achieve reliable outcomes. All parties should ensure that the campus adjudicatory system adheres to due process procedures in order to protect the innocent and accurately identify the guilty.

SECTION 3. Institution of higher education requirements for preventing, investigating, and adjudicating allegations of sexual conduct violations.

In general.

[Name and legal citation of pre-existing pertinent bill] is amended by adding at the end the following new part:

Sec. 101. Applicability and Definitions

(a) Applicability.

The requirements of this Act shall apply to any institution of higher education as defined below in Section 101(b)(5).

(b) Definitions.

In this part, the following definitions shall apply:

(1) Sexual violence.

The term *sexual violence* means—

- (A) aggravated sexual abuse under section 2241 of title 18, United States Code;
- (B) assault resulting in substantial bodily injury under section 113(a)(7) of title 18, United States Code;

- (C) battery, as defined under the applicable criminal law of the jurisdiction in which the institution is located;
- (D) rape, as defined under the applicable criminal law of the jurisdiction in which the institution is located;
- (E) sexual abuse under section 2242 of title 18, United States Code; and
- (F) sexual assault, as defined under the applicable criminal law of the jurisdiction in which the institution is located.

Allegations of *sexual violence*, as defined in this sub-section should, if possible and with the consent of the complainant, be referred to the appropriate law enforcement agency of the jurisdiction in which the postsecondary institution is located. Such law enforcement agency shall then determine whether to investigate and prosecute such alleged *sexual violence* as an actionable offense in the criminal justice system.

Following a criminal proceeding during which a verdict of guilty or not guilty was reached, the institution of higher education may not make any finding of responsibility against the accused student that is inconsistent with the factual findings reached in the criminal justice system.

(2) Sexual harassment.

The term *sexual harassment* means conduct of a sexual nature that is sufficiently severe, pervasive, and objectively offensive that it can be said to deprive an alleged victim of access to the educational opportunities or benefits provided by the institution.

(3) Minor conduct infraction.

The term *minor conduct infraction* means conduct of a sexual nature that is not *sexual violence* or *sexual harassment* but is otherwise prohibited by a student code of conduct or handbook, and is a less severe form of a *sexual conduct violation*.

(4) Sexual conduct violation.

The term *sexual conduct violation* refers collectively to *sexual violence*, *sexual harassment* or a *minor conduct infraction*.

(5) Institution of higher education.

The terms *institution of higher education* and *institution* shall refer to all public and private institutions subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

(6) Institutional disciplinary proceeding.

The term *institutional disciplinary proceeding* means the process by which an *institution of higher education* investigates, adjudicates and imposes a sanction with respect to a *sexual conduct violation*, in accordance with the institution's student code

of conduct or handbook and the provisions of this Act.

(7) Higher education responsible employee.

The term *higher education responsible employee* means an employee of the *institution of higher education* who—

(A) has the duty to report an alleged *sexual conduct violation* to appropriate institutional officials; and

(B) shall be responsible for providing the complainant and the accused student involved an alleged *sexual conduct violation*, with written explanations of their rights and options, as described in clauses (ii) through (vii) of section 485(f)(8)(B).

Sec. 102. Reducing Sexual Violence Associated with Alcohol and Drug Abuse.

(a) Institutions shall develop policies designed to reduce the incidence of sexual conduct violations associated with alcohol and drug abuse.

(b) Consistent with the requirements of the Drug Free Schools and Communities Act Amendments of 1989, the institution's policy shall address:

- (1) standards of conduct that are applicable to students at the institution;
- (2) penalties for violating local, state, and federal laws and the student code of conduct;
- (3) health and safety risks associated with the abuse of alcohol and illegal drugs;
- (4) effects of alcohol and illegal drugs on judgment and risk-taking; and
- (5) any counseling, treatment, or rehabilitation programs that are available to students.

(c) As appropriate, the institution's policy shall also address specific institutional rules such as prohibition of campus events sponsorship by alcohol retailers; restrictions on advertising; prohibitions or restrictions on alcohol consumption in residence halls; limitations on student- or campus-sponsored events where alcohol is served; designation of areas where alcohol can be consumed; elimination of alcohol self-service; and restricting or forbidding the serving alcohol at campus functions that may be attended by underage students and other minors.

(d) The institution's policy shall be:

- (1) in writing using simple and understandable language and clear formatting;
- (2) made available and posted on the institution's public website, and at other appropriate locations on campus;
- (3) provided, on an annual basis, to each student group, student team, or student organization which is part of or recognized by the institution, or permitted by the

institution to use its name or facilities; and
(4) incorporated into any education or training program described in Section 103, paragraphs (a) and (b) below.

103. Education, training, and support services.

(a) Education.

(1) In general.

Each institution of higher education subject to this Act is encouraged to provide to all students education programs designed to address potential sexual conduct violations that, at a minimum, address the development of healthy relationships, bystander intervention, and training for reporting sexual conduct code violations.

(2) Access to programs.

The institution is encouraged to—

(A) provide access to the programs required under this subsection for each student during each academic year; and

(B) ensure new students are made aware of and can access the programs as soon as possible after beginning the course of study at the institution.

(b) Training.

Each institution of higher education subject to this Act shall provide appropriate annual training to campus security personnel, campus investigators, campus disciplinary committee members, and other institutional personnel involved in institutional disciplinary proceedings, regarding the requirements of this Act, and shall at a minimum require each student who serves as a resident advisor in housing facilities which are owned or supervised by the institution to participate in this training.

(c) Support Services.

Each institution of higher education subject to this Act shall devote appropriate resources for the care, support, and guidance for all students affected by or accused of sexual violence, sexual harassment, and minor conduct infractions.

Sec. 104. Confidential Advisors

(a) Policy.

Each institution of higher education shall designate one or more confidential advisors for complainants and one or more confidential advisors for accused students.

(1) The Secretary shall designate categories of employees who may serve as confidential advisors. Confidential advisors shall not be an undergraduate student, a full-time graduate student, an employee designated as a higher education responsible employee, or Title IX coordinator as defined in section 106.8(a) of Title 34, Code of Federal Regulations.

(2) Institutions may partner with other institutions of higher education in their region or state to provide the services described in this paragraph, provided those services are made available on the campus of the institution on which the alleged violation may be adjudicated.

(3) Confidential advisors shall be individuals who are completely independent of the institutional disciplinary proceedings.

(b) Procedure.

(1) The institution of higher education shall assign confidential advisors to complainants and accused students and provide them information on how to contact their assigned confidential advisor.

(2) Once a higher education responsible employee has been informed about an alleged sexual conduct violation, the institution shall assign a complainant confidential advisor to the complaining student within three days; alternatively, the complaining student may seek out the assistance of a complainant confidential advisor at any time.

(3) The complainant confidential advisor shall explain to the complainant the definitions of sexual violence, sexual harassment, and minor conduct infraction, and assist the complainant in identifying whether the alleged sexual conduct violation involved sexual violence, sexual harassment, and/or a minor conduct infraction. The complainant confidential advisor will explain the complainant's reporting options, including options to notify a higher education responsible employee, law enforcement, and any other reporting options which may be available to the complainant.

(4) The complainant confidential advisor shall explain to the complainant all available remediation and accommodation options, consistent with the nature of the alleged offense and institutional policies. Such options may include: class schedule reassignments; dormitory reassignments; an informal resolution process including alternative dispute resolution as provided in section 106(j); counseling; formal adjudicatory proceedings; and/or any other available options. The confidential advisor shall also explain non-institutional options, such as resource centers and/or law enforcement.

(5) If an alleged sexual conduct violation potentially falls within the definition of sexual violence, the complainant confidential advisor shall inform the complainant that the institution's disciplinary proceedings have limited jurisdiction, scope, and available sanctions, and should not be considered a substitute for the criminal justice process, and that the failure to allow the collection and preservation of evidence by law enforcement

may limit the complainant's future options.

(6) The institution shall afford the complainant the opportunity to decide whether the institution shall investigate, adjudicate, or maintain as confidential an alleged sexual conduct violation.

(7) If a student decides to file a complaint of a sexual conduct violation with the institution or a complaint of sexual violence with law enforcement, the accused student shall be assigned a confidential advisor within 48 hours of the filing of either type of complaint, and, prior to any interview or questioning of the accused student by any investigator for the institution or other individual involved in the disciplinary proceeding process.

(8) The accused student confidential advisor shall advise the accused student of the institution's available investigatory and adjudicative procedures, and explain all procedures the accused student must follow to obtain investigatory reports and any other evidence that may be used in the disciplinary proceeding, potential sanctions which may be imposed, possible interim measures, and options for obtaining counseling or academic assistance and legal advice.

(9) Confidential advisors shall assist complainant and accused student with understanding and complying with institutional procedures throughout the disciplinary proceedings, and are to make themselves easily accessible and readily available throughout the pendency of the disciplinary proceedings.

(10) Confidential advisors may assist a complainant and/or accused student in contacting a higher education responsible employee, local law enforcement, or in accessing other resources.

(c) Confidentiality.

(1) Confidential advisors shall not be obligated to report to the institution or law enforcement the identity of a complainant, unless otherwise required to do so by state law.

(2) Subject to applicable state law, confidential advisors shall maintain the confidentiality of all communications with the complainant and accused student, and shall not disclose any such information without the consent of the complainant or accused student.

(3) Confidential advisors shall advise the complainant and accused student that any information disclosed to confidential advisors may not be protected by privilege, and may be admissible in a criminal or civil proceeding.

Sec. 105. Justice-Centered Investigations

Institutional officials who investigate alleged sexual conduct violations shall follow justice-centered investigative procedures and—

- (a) discharge their duties with objectivity and impartiality;
- (b) make reasonable efforts to contact all potential witnesses, in addition to those recommended by the complainant or accused student;
- (c) seek to gather and disclose both inculpatory and exculpatory evidence, and make all such evidence available to the complainant and the accused student;
- (d) thoroughly document, record and/or videotape all communications and interviews conducted with the complainant, accused student, and potential witnesses; document and preserve any evidence collected; and make all evidence available to the complainant and accused student at least five (5) days prior to any formal or informal institutional disciplinary hearing or resolution process;
- (e) evaluate, compile, and summarize evidence in an impartial, objective and equitable manner;
- (f) not serve as victim advocate, prosecutor, adjudicator, or appellate adjudicator in any disciplinary proceeding process involving the same parties.

Sec. 106. Requirements for Disciplinary Procedures

- (a) The institution only shall have jurisdiction over allegations of *sexual conduct violations* that occur on the institution's campus or in connection with off-campus institutional activities and events.
- (b) The institution shall not be obligated to initiate any investigation or disciplinary proceeding in response to a complaint of an alleged sexual conduct violation that is not initiated at the express request of the complainant.
- (c) The institution shall not undertake any investigation or adjudication of an allegation of sexual violence during the time a criminal investigation or adjudication concerning the same alleged conduct is pending.
- (d) The institution shall not undertake any final disciplinary action or impose any final punitive sanctions on the accused student while a criminal investigation is proceeding, but may impose non punitive interim measures if necessary to protect students attending the institution from potential harm.
- (e) In the event the accused student is indicted or otherwise bound over for trial, the institution may, if necessary to protect students attending the institution from potential harm, suspend the accused student from campus pending the outcome of the criminal proceeding.

(f) Presumption of Innocence.

- (1) Institutional investigative procedures and disciplinary proceedings shall afford the presumption of innocence to the accused student.
- (2) The institutional policy regarding an accused student's entitlement to a presumption of innocence shall be stated in the student handbook.

(g) Protection from Abuse Order.

- (1) For all alleged sexual conduct violations which include allegations of actual or threatened sexual violence, the complainant confidential advisor shall inform the complainant of the option to obtain a civil order through the local court system, to restrict contact between the complainant and the accused student if necessary to protect the complainant from potential harm.

(h) Due Process Rights.

An institution of higher education may not impose any sanction on an accused student in response to a sexual conduct violation which is reported to the institution unless that sanction is imposed pursuant to a formal or informal disciplinary proceeding which complies with each of the following requirements:

- (1) The complainant and the accused student shall have the right to be treated with dignity, respect, and sensitivity throughout the disciplinary proceedings.
- (2) The institution shall notify the accused student in writing of all alleged sexual conduct violations filed against the student within 48 hours of the decision to go forward with any formal or informal disciplinary proceeding process, and not later than 2 weeks prior to any formal or informal adjudicatory hearing or proceeding.
- (3) The notice required by subsection (2) shall delineate the nature of the alleged offense, the institutional conduct code section(s) alleged to have been violated, and summarize the specific conduct on which the complaint is based, including the date, location, parties involved, and identify all known potential witnesses.
- (4) The notice required by subsection (2) shall include a description of the rights and responsibilities of all parties participating in the disciplinary proceeding, and enumerate all possible sanctions.
- (5) Any additional evidence or witnesses discovered following issuance of the notice required by subsection (2) shall be disclosed to the complainant and accused student not later than five (5) days prior to any formal or informal adjudicatory hearing or proceeding.

(6) The institution shall provide each accused student a meaningful opportunity to admit or contest the allegations of the complaint at formal or informal adjudicatory hearing or proceeding.

(7) The institution shall ensure that all parties to the disciplinary proceeding have reasonable and complete access to all material evidence, including both inculpatory and exculpatory evidence, not later than five (5) days prior to the start of any formal or informal adjudicatory hearing or proceeding. Such evidence may include but is not limited to complainant statements, third-party witness statements, electronically stored information, written communications, social media posts, and demonstrative evidence.

(8) The institution shall permit each party to the disciplinary proceeding to be represented, at the sole expense of the party, by an attorney or other non-attorney advocate for the duration of the disciplinary proceeding process. The attorney or other advocate shall be permitted to actively participate in all interviews of the accused student and other preliminary stages prior to and including any formal or informal adjudicatory hearing or proceeding. The institution shall permit the attorney or other advocate to ask questions during any investigation and formal or informal adjudicatory hearing or proceeding, file relevant papers, examine evidence, and question witnesses.

(9) The accused student shall be informed of and entitled to the right to remain silent, and advised that any statements made prior to or during the course of the disciplinary proceeding may be used against the accused student in a court of law if criminal charges are filed.

(10) Subject to sub-section (9), the institution shall permit each party to the proceeding to safely confront witnesses, including the complainant and accused student, in an appropriate manner, including, if necessary, by submitting written questions to be asked by the person serving as the adjudicator in any formal or informal adjudicatory hearing or proceeding.

(11) The institution shall ensure that all formal or informal disciplinary proceedings are carried out free from conflicts of interest by preventing the commingling of administrative or adjudicative roles. For purposes of this sub-section, an institution shall be considered to commingle such roles if any individual carries out more than one of the following responsibilities during any time throughout the disciplinary proceeding process:

- (A) Victim counselor and victim advocate.
- (B) Confidential advisor.
- (C) Investigator.
- (D) Prosecutor.
- (E) Adjudicator.
- (F) Appellate adjudicator.
- (G) Witness.

(12) Following a decision of responsibility or sanctions assessed following a formal or informal adjudicatory hearing or proceeding, the institution shall provide the accused student an appellate process consistent with (1)-(11) above that is available to secure reversals of a finding of responsibility or of any sanction, but not of a finding of non-responsibility.

(i) Standard of Proof.

For purposes of any adjudication carried out as part of an institutional disciplinary proceeding under this section, an institution of higher education must establish and apply such standard of proof consistent with the laws of the jurisdiction in which the institution is situated. Said standard of proof shall be commensurate with the severity of the alleged sexual conduct violation and the potential sanctions, and in any case shall not be less than clear and convincing evidence when suspension or expulsion are possible sanctions.

(j) Sanctions.

(1) An institution of higher education may establish and apply such sanctions as it considers appropriate based on factual findings reached in any formal or informal adjudicatory hearing or proceeding, against any student found responsible for a sexual conduct violation. Said sanctions shall be commensurate with the severity of the conduct for which the student was adjudicated responsible.

(2) An institution of higher education may, but is not required to, make a notation on the transcript of any student found responsible for a sexual conduct violation other than a minor conduct infraction, of the nature of violation and the sanctions assessed. Such notation shall identify specifically whether the sexual conduct violation for which the student was found responsible was:

(A) Sexual violence, as defined in Section 101, paragraph (b)(1) above; and/or

(B) Sexual harassment, as defined in Section 101, paragraph (b)(2) above.

(k) Alternative Dispute Resolution.

(1) An institution may, but is not required to, allow any party involved in an allegation of a sexual conduct violation to present the opposing party a proposal for resolving the complaint without a formal institutional disciplinary proceeding. Any such proposal shall be submitted to the institution for dissemination to the opposing party.

(2) If requested by either party, an institution may, but is not required to, facilitate alternative dispute resolution procedures which eliminate or minimize personal interactions between the parties to a sexual conduct violation, provided that any institution personnel participating in the alternative dispute resolution process shall not otherwise participate in the disciplinary proceeding.

- (3) If parties involved in an allegation of a sexual conduct violation cannot reach an agreement resolving an institutional disciplinary proceeding, the parties' written or oral statements made during the alternative dispute resolution process shall not be provided to individual(s) participating in the institutional disciplinary proceeding.
- (l) The procedures provided for in this section shall not be construed to be a substitute for adjudication by the criminal justice system.

Sec. 107. Memorandum of Understanding

(a) Memorandum of Understanding.

Each institution of higher education shall make a good faith effort to enter into a memorandum of understanding with any law enforcement agency lawfully operating in the jurisdiction in which the institution is situated (excluding a campus located outside the United States), that clearly delineates the respective responsibilities of the institution and law enforcement, and promotes the exchange of information, subject to applicable state and federal confidentiality laws, concerning acts of criminal sexual violence affecting the institution's students on its campus or in connection with off-campus institutional activities and events.

(b) Review.

Each institution of higher education shall make all reasonable efforts to review biannually any memorandum of understanding entered into under this section. As part of the review process, the institution shall contact the participating law enforcement agency to discuss how changes in policies or procedures at either the institution or law enforcement agency may impact the provisions of the memorandum of understanding. If changes in policies or procedures that impact the provisions of the memorandum of understanding are identified, the institution and the law enforcement agency shall update the memorandum of understanding consistent with those changes.

(c) Contents.

Each memorandum of understanding described under this section shall include—

- (1) Delineation of the respective investigative responsibilities of the institution and law enforcement agency;
- (2) Protocols for investigations, including procedures for notification, evidence collection and preservation and communication between the institution and law enforcement agency;
- (3) Methods of sharing information about allegations of criminal sexual violence when authorized or requested to do so by a complainant, provided the complainant has been informed about potential repercussions of sharing information with law enforcement.

Sec. 108. Assurance of Transparency.

- (a) Each institution of higher education shall establish written policies and procedures that incorporate the provisions of this Act.
- (b) The institution's policies and procedures implemented in accordance with this Act shall be reviewed and updated, as appropriate, on an annual basis.
- (c) The institution's policies and procedures implemented in accordance with this Act shall be made publicly available and easily accessible in the student handbook and on the institution's web site.

Sec. 109. Effect on Existing Laws and Regulations.

- (a) The provisions of this Act supersede the provisions of any previous federal or state statute, rule, regulation, interpretation, guidance, resolution or agreement to the extent it is inconsistent with the terms herein.
- (b) A state statute, regulation, order or interpretation is not inconsistent with the provisions of this Act if the statute, regulation, order or interpretation affords additional rights or protections not inconsistent with the intent or provisions of this Act.

Sec. 110. Effective Date.

This Act shall take effect twelve (12) months after enactment. The provisions of this Act shall apply to complaints of sexual conduct violations made after the effective date of this Act.