

FIRST REGULAR SESSION

HOUSE BILL NO. 573

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOHRMAN.

0202H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 173, RSMo, by adding thereto eleven new sections relating to due process in proceedings in higher education, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 173, RSMo, is amended by adding thereto eleven new sections, to be known as sections 173.1898, 173.1900, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920, 173.1925, 173.1927, 173.1930, and 173.1935, to read as follows:

173.1898. 1. The provisions of sections 173.1898 to 173.1935 are intended to ensure that, in any proceeding related to 20 U.S.C. Sections 1681 to 1688, individuals in this state have the right to defend their character and the right to due process protections under the Constitution of Missouri and the Constitution of the United States, including the Bill of Rights. Article I, Section 14 of the Constitution of Missouri provides that "the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay." It is the intent of the general assembly that sections 173.1898 to 173.1935 fulfill this constitutional guarantee.

2. For purposes of sections 173.1898 to 173.1935, "institution of higher education" means an institution of higher education located in Missouri that receives state funds or any public benefit.

173.1900. 1. Any student at an institution of higher education may request a due process hearing before the administrative hearing commission with respect to any formal complaint filed with the institution arising under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto. Such request shall include the student's name and address, name of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 the institution of higher education, issue, and suggested resolution of the dispute, if known.
6 The administrative hearing commission shall assign a commissioner to hear the case within
7 ten days of receiving notice of the request.

8 2. The student, school officials, and any other persons affected by the action in
9 question shall present all evidence relative to the formal complaint at the hearing.

10 3. The provisions of chapter 536 shall govern hearings and prehearing procedures
11 conducted under the authority of this section. Any party may obtain discovery in the same
12 manner, and under the same conditions and requirements, as is or may hereafter be
13 provided with respect to discovery in civil actions by rule of the supreme court of Missouri
14 for use in the circuit courts. The administrative hearing commission may enforce discovery
15 by the same methods as provided by rule of the supreme court of Missouri for use in civil
16 cases.

17 4. The administrative hearing commission shall issue a final decision or order
18 within sixty days from the conclusion of the hearing.

19 5. After review of all evidence presented, the commissioner shall issue findings,
20 conclusions, and a decision in the matter and forward the written decision to the student
21 and to the president of the institution of higher education. Except in the case of an
22 expedited hearing described under subsection 6 of this section, the commissioner assigned
23 to the matter may adopt a specific time line at the request of either party.

24 6. Any party to a case filed under this section may request an expedited due process
25 hearing by the administrative hearing commission. If a party requests an expedited
26 hearing, the administrative hearing commission shall assign a commissioner to hold a
27 hearing and render a decision within sixty days of the receipt of the request for an
28 expedited hearing.

173.1905. 1. Any student at an institution of higher education may request a due
2 process hearing before the administrative hearing commission with respect to an appeal
3 of any case arising under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, if
4 the student received disciplinary action by the institution in the case. Notwithstanding any
5 other provision of law, the student may make such a request with respect to a disciplinary
6 action taken by the institution before the effective date of this section. The request shall
7 include the student's name and address, name of the institution of higher education, issue,
8 and suggested resolution of the dispute, if known. Within ten days of receiving notice of
9 the request, the administrative hearing commission shall assign a commissioner to hear the
10 case and shall enter an order staying the disciplinary action until the administrative
11 hearing commission issues its final decision or order.

12 **2. The student, school officials, and any other persons affected by the action in**
13 **question shall present all evidence relative to the matter under appeal at the hearing.**

14 **3. The provisions of chapter 536 shall govern hearings and prehearing procedures**
15 **conducted under the authority of this section. Any party may obtain discovery in the same**
16 **manner, and under the same conditions and requirements, as is or may hereafter be**
17 **provided with respect to discovery in civil actions by rule of the supreme court of Missouri**
18 **for use in the circuit courts. The administrative hearing commission may enforce discovery**
19 **by the same methods as provided by rule of the supreme court of Missouri for use in civil**
20 **cases.**

21 **4. The administrative hearing commission shall issue a final decision or order**
22 **within sixty days from the conclusion of the hearing.**

23 **5. After review of all evidence presented, the commissioner shall issue findings,**
24 **conclusions, and a decision in the matter and forward the written decision to the student**
25 **and to the president of the institution of higher education. Except in the case of an**
26 **expedited hearing described under subsection 6 of this section, the commissioner assigned**
27 **to the matter may adopt a specific time line at the request of either party.**

28 **6. A student may request an expedited due process hearing by the administrative**
29 **hearing commission to challenge a disciplinary action that involves suspension or**
30 **expulsion. If a student requests an expedited hearing under this section, the administrative**
31 **hearing commission shall assign a commissioner to hold a hearing and render a decision**
32 **within sixty days of the receipt of the request for an expedited hearing.**

173.1907. 1. The administrative hearing commission shall compile relevant
2 **statistics on the cases it hears under sections 173.1900 and 173.1905.**

3 **2. The administrative hearing commission shall promulgate rules to implement the**
4 **provisions of this section including, but not limited to, the requirements for the types of**
5 **statistics to be compiled. Any rule or portion of a rule, as that term is defined in section**
6 **536.010, that is created under the authority delegated in this section shall become effective**
7 **only if it complies with and is subject to all of the provisions of chapter 536 and, if**
8 **applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of**
9 **the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
10 **the effective date, or to disapprove and annul a rule are subsequently held**
11 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
12 **after the effective date of this section shall be invalid and void.**

173.1910. 1. For all formal complaints pending under 20 U.S.C. Sections 1681 to
2 **1688, or any amendments thereto, an institution of higher education shall provide students**
3 **fair, equitable, and individualized interim measures that avoid depriving any student of**

4 his or her education pending the investigation and resolution of the formal complaint. If
5 interim emergency measures are deemed necessary by the institution that will deprive any
6 student of his or her education, the institution shall provide the affected student with the
7 opportunity for an expedited due process hearing.

8 2. Any institution of higher education that handles formal complaints filed under
9 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall adopt grievance
10 procedures for the formal complaints that provide for a prompt and equitable resolution
11 and include the opportunity for both the complainant and the respondent to:

12 (1) Within ten days after the filing of the formal complaint, obtain a copy of the
13 actual complaint filed by the complainant that includes sufficient details regarding the
14 identities of the parties; the identities of any known witnesses; any regulation or code
15 allegedly violated; and the precise conduct alleged to have violated the regulation or code,
16 including the date, location, and circumstances of the alleged conduct or incident;

17 (2) After the conclusion of any investigation, obtain a complete copy of the
18 investigation, including any materials provided to an investigator by the complainant or
19 the respondent; and

20 (3) Obtain the names of any witnesses disclosed by the complainant or the
21 respondent.

22 3. The grievance procedures shall not require any party to speak to an investigator.

23 4. The grievance procedures shall specify that both the complainant and the
24 respondent shall receive, before any hearing and in a timely manner, any information to
25 be used at the hearing, as well as a notice in twelve-point, bold font describing the right of
26 any student to request a due process hearing before the administrative hearing commission
27 under section 173.1900 or 173.1905.

28 5. The grievance procedures shall describe the range of possible sanctions and
29 remedies that the institution of higher education may implement following any
30 determination of responsibility. Possible sanctions may include, but not be limited to, loss
31 of certain campus privileges, removal from campus housing, probation, suspension, or
32 expulsion.

33 6. The institution of higher education shall use an informal resolution process that
34 may include mediation, education, counseling, or restorative justice if both the complainant
35 and the respondent agree to such a process. The institution shall notify both the
36 complainant and the respondent of the option to use the informal resolution process.

37 7. The institution of higher education shall not limit, prohibit, delete, or screen any
38 evidence to be used at any point during the resolution of a formal complaint filed under
39 20 U.S.C. Sections 1681 to 1688, or any amendments thereto.

40 **8. Any person who makes any decision regarding any formal complaint filed under**
41 **20 U.S.C. Sections 1681 to 1688, or any amendments thereto, and who is an administrator**
42 **at the institution of higher education or who is employed by the office that handles such**
43 **complaints shall disclose to all parties in the case any prejudicial beliefs or previous**
44 **experiences that would provide actual or perceived bias for a decision. To comply with the**
45 **provisions of this subsection, the person shall sign and submit to all parties in the case an**
46 **affidavit, sworn to under penalty of perjury, either listing any prejudicial beliefs or**
47 **previous experiences that would provide actual or perceived bias for a decision or stating**
48 **that, to the best of the affiant's knowledge, the affiant does not have any prejudicial beliefs**
49 **or previous experiences that would provide actual or perceived bias for a decision.**

50 **9. Any institution of higher education that handles formal complaints filed under**
51 **20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall adopt hearing**
52 **procedures for the formal complaints that:**

53 **(1) Ensure that all testimony is made under oath or affirmation as to its truth;**

54 **(2) Guarantee due process for all parties as required by the Constitution of**
55 **Missouri and the Constitution of the United States, including the Bill of Rights;**

56 **(3) Require credibility to be given to law enforcement reports and sworn affidavits**
57 **from mandatory reporters in accordance with their apparent reliability; and**

58 **(4) Guarantee all students the right to:**

59 **(a) Be represented by an attorney;**

60 **(b) Present any and all evidence, including testimony from witnesses;**

61 **(c) Have all evidence and testimony presented considered;**

62 **(d) Cross-examine any party or witness or present questions for the purpose of**
63 **cross-examination;**

64 **(e) Receive, before the hearing, the names of any and all persons who will be**
65 **present at the hearing as decisionmakers; and**

66 **(f) Reject any decisionmaker who has a bias or conflict of interest or who is a friend**
67 **of any witness through any interaction, including any online interaction.**

68

69 **The institution of higher education shall not be required to adopt formal rules of evidence,**
70 **but the standards of evidence for the hearing shall be equivalent to those applied under**
71 **chapter 536. To reach a determination of responsibility, the decisionmaker or**
72 **decisionmakers shall apply the clear and convincing evidence standard.**

73 **10. Throughout the process of handling a formal complaint filed under 20 U.S.C.**
74 **Sections 1681 to 1688, or any amendments thereto, the institution of higher education shall:**

75 (1) Ensure that all parties use the terms "complainant" and "respondent" and
76 refrain from using the term "survivor" or any other term that presumes guilt before an
77 actual finding of guilt; and

78 (2) Define consent as a freely given agreement to the conduct at issue by a
79 competent person through words or overt actions.

173.1915. 1. Notwithstanding any section granting immunity to public employees,
2 any student of an institution of higher education who fails to receive due process as
3 required under section 173.1910 shall have a civil cause of action against any employee of
4 the institution of higher education who intentionally denied the student such due process.
5 The student shall be entitled to recover from the employee who denied him or her due
6 process such relief as may be appropriate including, but not limited to:

7 (1) Actual damages;

8 (2) Punitive damages; and

9 (3) A reasonable attorney's fee and other litigation costs reasonably incurred.

10 2. Failure to provide due process to a respondent student in any proceeding under
11 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall:

12 (1) Be considered a breach of contract between the student and the institution of
13 higher education that handled the proceeding; and

14 (2) Be considered by the attorney general as an unlawful act prohibited under
15 chapter 407 for purposes of investigation under section 173.1925.

16 3. If a person makes a false claim or files a false formal complaint under 20 U.S.C.
17 Sections 1681 to 1688, or any amendments thereto, the person who was the subject of the
18 false claim or complaint has a civil cause of action against the person who made the false
19 claim or complaint and is entitled to recover from the person who made the false claim or
20 complaint such relief as may be appropriate including, but not limited to:

21 (1) Actual damages;

22 (2) Punitive damages; and

23 (3) A reasonable attorney's fee and other litigation costs reasonably incurred.

173.1920. 1. Any institution of higher education that conducts any type of training
2 on 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall maintain and publish
3 on its website any materials used in the training.

4 2. Any institution of higher education that handles formal complaints filed under
5 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall maintain and publish
6 on its website information and procedures related to such complaints. All information
7 relating to 20 U.S.C. Sections 1681 to 1688, and any amendments thereto, shall appear
8 together in one document or web page that is easily accessible.

173.1925. 1. The attorney general shall have authority to investigate alleged or suspected violations of section 173.1910 and shall have all powers provided by sections 407.040 to 407.090 in connection with investigations of alleged or suspected violations of section 173.1910 as if the violations are unlawful acts prohibited under chapter 407.

2. Any institution of higher education that violates a student's due process rights under section 173.1910 shall be fined two hundred fifty thousand dollars. All fines collected in accordance with this subsection shall be credited to and deposited in the merchandising practices revolving fund established in section 407.140.

3. The attorney general shall collect information and statistics from institutions of higher education on their procedures and policies for formal complaints filed under 20 U.S.C. Sections 1681 to 1688, and any amendments thereto. The information collected on each institution shall include, but not be limited to, the following:

(1) A description of the steps the institution takes after receiving a formal complaint;

(2) A description of the ways in which the institution considers evidence in its proceedings;

(3) The rights afforded to students under the institution's procedures;

(4) Any changes in the institution's procedures as a result of guidance received from the United States Department of Education in 2017 or any subsequent year, any rules promulgated by the United States Department of Education, or any other actions taken by the United States Department of Education; and

(5) Demographic patterns or other patterns noted by the institution with respect to formal complaints.

173.1927. If any entity of the federal government brings suit against an institution of higher education for complying with the requirements of sections 173.1898 to 173.1935, the attorney general shall have authority to bring suit on behalf of the institution against any entity in order to defend the requirements established under sections 173.1898 to 173.1935.

173.1930. 1. For purposes of this section, the following terms mean:

(1) "Exempt record", a record that is neither required by law to be open to the public nor is confidential, but may be open in the discretion of the public entity;

(2) "Personally identifiable information":

(a) Information that directly identifies an individual; and

(b) Information that, alone or in combination with other information, is linked or linkable to an individual and would allow a reasonable person who lacks knowledge of the relevant circumstances to identify the individual.

9 **2. Notwithstanding the provisions of chapter 610, any record related to a formal**
10 **complaint or investigation under 20 U.S.C. Sections 1681 to 1688, or any amendments**
11 **thereto, at an institution of higher education, or at the administrative hearing commission,**
12 **which contains personally identifiable information about a party to the formal complaint**
13 **is an exempt record.**

173.1935. Sections 173.1898 to 173.1930 shall apply only to the extent they are not
2 **inconsistent with the requirements under 20 U.S.C. Sections 1681 to 1688, any amendments**
3 **thereto, and any regulations promulgated thereunder.**

 Section B. Because of the importance of protecting the due process rights of individuals
2 in Title IX proceedings and ensuring that individuals accused of sexual misconduct are able to
3 defend their character, the enactment of sections 173.1898, 173.1900, 173.1905, 173.1907,
4 173.1910, 173.1915, 173.1920, 173.1925, 173.1927, 173.1930, and 173.1935 of this act is
5 deemed necessary for the immediate preservation of the public health, welfare, peace, and safety,
6 and is hereby declared to be an emergency act within the meaning of the constitution, and the
7 enactment of sections 173.1898, 173.1900, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920,
8 173.1925, 173.1927, 173.1930, and 173.1935 of this act shall be in full force and effect upon its
9 passage and approval.

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