HB 1288-FN - AS AMENDED BY THE HOUSE

22Feb2024... 0332h

2024 SESSION

24-2086
05/10

HOUSE BILL ***1288-FN***

AN ACT relative to establishing certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning.

SPONSORS: Rep. Lynn, Rock. 17; Rep. Cordelli, Carr. 7; Rep. Ammon, Hills. 42

COMMITTEE: Education

ANALYSIS

This bill establishes certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to establishing certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Due Process Protections for Students, Student Organizations, and Faculty of Public Colleges and Universities. Amend RSA by inserting after chapter 188-I the following new chapter:

CHAPTER 188-J

DUE PROCESS PROTECTIONS FOR STUDENTS, STUDENT ORGANIZATIONS, AND FACULTY OF PUBLIC COLLEGES AND UNIVERSITIES

188-J:1 Declaration of Purpose. The purpose of this chapter is to establish for students, student organizations, and faculty members of publicly funded New Hampshire colleges and universities the right to certain due process protections when disciplinary proceedings are brought against them by such institutions.

188-J:2 Definitions. In this chapter:

I. "Disciplinary proceeding" means an action or proceeding instituted against a student, student organization, or faculty member of a public institution of higher education that could result in the student or faculty member being suspended, expelled, or terminated, or result in a student organization being deprived, either temporarily or permanently, of any of the rights or privileges accorded to other student organizations duly recognized or approved by the institution.

II. "Criminal allegation" means any allegation of wrongdoing of a nature that would constitute a criminal offense under New Hampshire law, regardless of whether such an offense also constitutes a breach of rules promulgated by the institution of higher education.

III. "Faculty member" means a full- or part-time member of the faculty of a public institution of higher education.

IV. "Public institution of higher education" means a post-secondary institution of higher education publicly funded by the state of New Hampshire, including all component colleges and universities of the university system of New Hampshire and all component colleges of the community college system of New Hampshire.

V. "Student" means a person who is enrolled either full- or part-time in a course of study at a public institution of higher education.

VI. "Student organization" means an organization or group of students who share similar interests or activities and which is recognized or approved by, or has sought recognition or approval from, a public institution of higher education which remains in the process of adjudication or appeal.

188-J:3 Due Process Rights Established.

I. In all disciplinary proceedings against a student, student organization, or faculty member, the student, student organization, or faculty member shall be entitled to a hearing under published procedures that include, at a minimum, all of the following:

(a) The right to receive written notice at least 7 days prior to the hearing of the allegations upon which proceeding is based, and the specific provisions of law, rule, regulation, or code of conduct that allegedly were violated.

(b) The right to receive at least 5 days before the hearing a listing of all known witnesses who have provided or will provide evidence or information against the student, student organization, or faculty member, as well as copies of all written documents, statements of witnesses, photographs, electronic data, tangible evidence, and all other relevant inculpatory or exculpatory information.

(c) The right to the presumption that no violation occurred. This presumption may be overcome only if the public institution of higher education establishes by a preponderance of the evidence that the violation alleged was committed by the student, student organization, or faculty member charged.

(d) The right against self-incrimination, and that invocation of this right may not afford a basis for the decision-maker to draw an adverse inference against the person who does so.

(e) The right to confront and cross examine witnesses who testify against the student, student organization, or faculty member.

(f) The right to present a defense and call witnesses in support of the defense.

(g) The right to an impartial hearing officer or panel.

(h) The right to have the assistance of an advisor, advocate, or legal representative, at the student, student organization, or faculty member's own expense, who shall be allowed to be present at and directly participate in all aspects of the proceeding. Such advisor, advocate, or legal representative shall not serve in any other role in connection with the proceeding, including as investigator, witness, decider of fact, hearing officer, panel member, decider of an appeal, or advisor to any of the foregoing.

(i) The right to have a verbatim record of the hearing made and preserved for use in the event there is an appeal.

(j) The right to appeal a final adverse decision to the vice president of student affairs or equivalent official or body specifically designated by the institution to hear such appeals. The person or persons comprising the appeal tribunal shall not have directly participated in any other aspect of the proceeding in question.

II. The procedural rights, including the hearing, specified in paragraph I shall be afforded to a student, student organization, or faculty member prior to the imposition of any discipline; provided, however, that in cases where the public institution of higher education can show a substantial likelihood of an imminent threat of physical injury to any person or significant damage to property before a hearing can be held, the institution may immediately take such actions as are necessary to prevent or ameliorate the threat and shall thereupon hold a hearing as soon as reasonably practicable after it has taken such actions.

III. A student, student organization, or faculty member may waive any or all of the rights specified in paragraph I, provided that such waiver is made knowingly, intelligently, and voluntarily.

IV. In matters concerning a criminal allegation brought before any New Hampshire court, the findings of any postsecondary institution disciplinary proceeding shall not be admissible as evidence. Where criminal charges have been brought against any student, or where a protective order exists, a postsecondary institution may not proceed with its own disciplinary proceedings based on the same allegations until such a time that the criminal charges have been adjudicated by the courts. During such a period while criminal charges are in adjudication by the courts, or a protective order is in place, temporary disciplinary actions may be taken by the college pending final resolution of the criminal proceedings.

188-J:4 Rules and Regulations of Public Institutions of Higher Education.

Any New Hampshire public institution of higher education may adopt rules, regulations, policies or procedures that afford students, student organizations, or faculty members more due process protections than those provided in this chapter, but no such institution shall adopt or utilize any rules, regulations, policies, or procedures that afford students, student organizations, or faculty members facing a disciplinary proceeding less protections than those afforded them herein.

2 Effective Date. This act shall take effect on July 1, 2025.

LBA
24-2086
Amended 3/11/24

HB 1288-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2024-0332h)

AN ACT relative to establishing certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	$0	$0	$0
Revenue Fund(s)	None			
Expenditures	$0	CCSNH - $386K in FY25, $380K in FY26, and $380K in FY27 USNH - Minimum of $500K Per Year		
Funding Source(s)	CCSNH and USNH Operating Expenses			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] See Below
- Does this bill authorize new positions to implement this bill? [X] N/A

METHODOLOGY:

This bill establishes certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning.

Community College System of New Hampshire

The Community College System of New Hampshire (CCSNH) has identified the following areas to which they may incur a cost relative to this bill, along with estimated impacts:

- Paying outside counsel to
  - overhaul existing CCSNH policy and procedures for the affected groups;
  - assess how the provisions of the bill affect requirements under any other relevant laws, regulations, or authority such as Title IX of the Education Amendments of 1972, CCSNH collective bargaining agreement provisions, or other, and costs to renegotiate CBAs to align with elements of proposed new law;
  - prepare for and attend hearings which will, under the bill, also involve the participation of attorneys for the person who is the subject of the hearing;

- Paying to create and maintain the required verbatim record of every hearing/proceeding;
- Costs for one new position to coordinate adjudication procedures across CCSNH and train all affected personnel on requirements of new procedures; and
- Additional costs for employee participation on panels

	FY 2025	FY 2026	FY 2027
Outside Counsel Costs	$256,000	$250,000	$250,000
Verbatim Records Costs	$10,000	$10,000	$10,000
New Position (Adjudication Coordination)	$100,000	$100,000	$100,000
Additional Staff Costs for Panels	$20,000	$20,000	$20,000
Total	**$386,000**	**$380,000**	**$380,000**

University System of New Hampshire

The University System of New Hampshire (USNH) states this bill would afford due process rights to all University System students, faculty, and student organizations facing disciplinary action that could result in expulsion, suspension, or termination, or, in the case of student organizations, the deprivation of customary rights and privileges. Numerous specified due process rights include the right to a hearing, to cross-examine witnesses, and to appeal. This bill includes the requirement to suspend institutional disciplinary proceedings in situations where criminal charges have been brought against a student or where a protective order exists based on the same allegations, until the criminal charges are adjudicated.

USNH states this bill is estimated to increase USNH operating expense by a minimum of $500,000 per year. One component office (Community Standards) of the University of NH produces an estimate of $215,000 per year to support the salaries and benefits of three (3) additional staff members to manage increased workload in that office to support statutory compliance. Adding in expenses for other disciplinary areas beyond community standards, for other University System campuses, and for increased training and investigation and expanded volunteer management for additional panel hearings, a conservative estimate is $500,000 in increased University System expenses annually. There is potential further increased expense and/or lost revenue associated with the threat of liability, federal fines, or federal funding revocation given the conflict with federal law discussed below. Because the potential impact would be situational, an estimated range of expense for this aspect cannot be provided but could be substantial.

USNH states the provision suspending disciplinary proceedings pending the adjudication of criminal charges directly conflicts with federal guidance that requires postsecondary institutions to act quickly to respond to certain kinds of violations. Compliance with state law could result in violation of sub-regulatory guidance on Title IX and Title VII, while also exposing the community to foreseeable harm by failing to take action against students who have

committed egregious acts. Such inaction by the institution could increase exposure to civil litigation and federal fines and jeopardize Title funding (student financial aid).

AGENCIES CONTACTED:

Community College System of New Hampshire and University System of New Hampshire