

Rep. Ladd, Graf. 5
Rep. Popovici-Muller, Rock. 17
Rep. P. Brown, Rock. 14
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09/08

Amendment to HB 510-FN

1 Amend RSA 188-K:2 and 188-K:3 as inserted by section 1 of the bill by replacing it with the
2 following:

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4 188-K:2 Definitions. As used in this chapter:

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

11 II. "Faculty member" means a full or part-time member of the faculty of a New Hampshire
12 public institution of higher education, but does not include a faculty member who is in probationary
13 status.

14 III. "Public institution of higher education" means "public institution of higher education" as
15 defined by RSA 188-J:1, V.

16 IV. "Student" means "student" as defined by RSA 188-J:1, VII.

17 V. "Student organization" means "student organization" as defined by RSA 188-J:1, VIII.

18 188-K:3 Due Process Rights Established.

19 I. In all disciplinary proceedings, as defined by RSA 188-K:2, I, against a student, student
20 organization, or faculty member, the student, student organization, or faculty member shall be
21 entitled to a hearing under published procedures that include, at a minimum, all of the following:

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

25 (b) The right to receive at least 5 days before the hearing a listing of all known witnesses
26 who have provided or will provide evidence or information against the student, student organization,
27 or faculty member, as well as copies of all written documents, statements of witnesses, photographs,
28 electronic data, tangible evidence, and all other relevant inculpatory or exculpatory information.
29 Recipients shall take reasonable steps to prevent the parties from disclosing to third parties
30 information and evidence obtained through the grievance process.

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

5 (d) The right against self-incrimination.

6 (e) The right to confront and cross-examine witnesses who provide evidence against the
7 student, student organization, or faculty member; provided, however, that if a person who claims to
8 be a victim of the conduct giving rise to the disciplinary action objects to being cross-examined by the
9 person accused of the violation, the hearing officer or panel shall require that the cross-examination
10 be conducted by another person selected by the accused and approved by the hearing officer or panel.
11 The person accused shall have the right to be present when his or her accuser is cross-examined.

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

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

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

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

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

26 II. The procedural rights, including the hearing, specified in paragraph I shall be afforded to
27 a student, student organization, or faculty member prior to the imposition of any discipline, provided
28 however that, in cases where the public institution of higher education can show a substantial
29 likelihood of an immediate threat to the physical health or safety of any student or other individual
30 before a hearing can be held, the institution may immediately take such actions as are necessary to
31 prevent or ameliorate the threat and shall thereupon hold the hearing as soon as reasonably
32 practicable after it has taken such actions.

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