

114TH CONGRESS
1ST SESSION

H. R. 3408

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication by institutions of higher education of allegations related to sexual violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. SESSIONS (for himself and Mrs. BROOKS of Indiana) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication by institutions of higher education of allegations related to sexual violence, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Campus Act of
5 2015”.

1 **SEC. 2. INSTITUTION OF HIGHER EDUCATION REQUIRE-**
2 **MENTS FOR PROTECTING VICTIMS OF SEX-**
3 **UAL VIOLENCE AND INVESTIGATING AND AD-**
4 **JUDICATING ALLEGATIONS OF SEXUAL VIO-**
5 **LENCE.**

6 (a) IN GENERAL.—Title I of the Higher Education
7 Act of 1965 (20 U.S.C. 1001 et seq.) is amended by add-
8 ing at the end the following new part:

9 **“PART F—TREATMENT OF ALLEGATIONS OF**
10 **SEXUAL VIOLENCE**

11 **“SEC. 161. APPLICATION; DEFINITION.**

12 “(a) APPLICATION.—The requirements of this part
13 shall apply to any institution of higher education receiving
14 Federal financial assistance under this Act, including fi-
15 nancial assistance provided to students under title IV,
16 other than a foreign institution of higher education.

17 “(b) DEFINITIONS.—In this part, the following defi-
18 nitions shall apply:

19 “(1) COVERED ALLEGATION.—The term ‘cov-
20 ered allegation’ means, with respect to an institution
21 of higher education, an allegation that a student of
22 the institution committed an act of sexual violence,
23 or that members of a student organization of the in-
24 stitution or the organization itself committed or were
25 involved in creating a hostile environment resulting
26 in an act of sexual violence.

1 “(2) INSTITUTIONAL DISCIPLINARY PRO-
2 CEEDING.—The term ‘institutional disciplinary pro-
3 ceeding’ means the process by which an institution
4 of higher education investigates and adjudicates a
5 covered allegation and imposes a sanction with re-
6 spect to the allegation, in accordance with the insti-
7 tution’s own code of conduct or similar internal
8 rules.

9 “(3) SEXUAL VIOLENCE.—The term ‘sexual vio-
10 lence’ means, with respect to an institution of higher
11 education—

12 “(A) aggravated sexual abuse under sec-
13 tion 2241 of title 18, United States Code;

14 “(B) assault resulting in substantial bodily
15 injury under section 113(a)(7) of title 18,
16 United States Code;

17 “(C) battery, as defined under the applica-
18 ble criminal law of the jurisdiction in which the
19 institution is located;

20 “(D) rape, as defined under the applicable
21 criminal law of the jurisdiction in which the in-
22 stitution is located;

23 “(E) sexual abuse under section 2242 of
24 title 18, United States Code; and

1 “(F) sexual assault, as defined under the
2 applicable criminal law of the jurisdiction in
3 which the institution is located.

4 **“SEC. 162. EDUCATION, REPORTING, AND STUDENT CARE**
5 **STRATEGIES FOR PREVENTING SEXUAL VIO-**
6 **LENCE.**

7 “(a) EDUCATION PROGRAMS.—

8 “(1) IN GENERAL.—Each institution of higher
9 education which is subject to this part is encouraged
10 to provide education programs designed to address
11 sexual violence that, at a minimum, provide training
12 for reporting covered allegations, intervening as a
13 bystander, and fostering development of healthy re-
14 lationships.

15 “(2) ACCESS TO PROGRAMS.—The institution is
16 encouraged—

17 “(A) to provide access to the programs re-
18 quired under this subsection for each student
19 during each academic year; and

20 “(B) to ensure new students are made
21 aware of the programs and can access them as
22 soon as possible after beginning the course of
23 study at the institution.

24 “(b) SUPPORT SERVICES.—Each institution of higher
25 education which is subject to this part shall devote appro-

1 puate resources for the care, support, and guidance for
2 students affected by sexual violence.

3 “(c) ROLE OF VOLUNTEER ADVISORS TO STUDENT
4 ORGANIZATIONS.—An institution of higher education
5 which is subject to this part—

6 “(1) may not designate an adult volunteer advi-
7 sor to a student organization, or any employee of a
8 student organization who is not also an employee of
9 the institution, as a campus security authority under
10 section 485 or regulations implementing that sec-
11 tion; and

12 “(2) may not deny recognition to a student or-
13 ganization because an advisor or employee described
14 in paragraph (1) does not register or serve as a
15 campus security authority under section 485 or reg-
16 ulations implementing that section.

17 “(d) TRAINING.—Each institution of higher edu-
18 cation which is subject to this part shall provide appro-
19 priate annual training to campus security personnel, cam-
20 pus disciplinary committee members, and other relevant
21 institutional personnel regarding the requirements of this
22 part, and shall at a minimum require each student who
23 serves as a resident advisor in housing facilities which are
24 owned or supervised by the institution to participate in
25 this training.

1 **“SEC. 163. DUE PROCESS REQUIREMENTS FOR INSTITU-**
2 **TIONAL DISCIPLINARY PROCEEDINGS.**

3 “(a) DUE PROCESS RIGHTS.—Except as provided
4 with respect to interim sanctions under section 164, each
5 institution of higher education which is subject to this part
6 may not impose any sanction on any person, including a
7 student organization, in response to a covered allegation
8 which is reported to the institution unless the sanction is
9 imposed under a formal hearing or similar adjudicatory
10 proceeding, in accordance with institutional disciplinary
11 proceedings that meet each of the following requirements:

12 “(1) The institution shall provide all parties to
13 the proceeding with adequate written notice of the
14 allegation not later than 2 weeks prior to the start
15 of any formal hearing or similar adjudicatory pro-
16 ceeding, and shall include in such notice a descrip-
17 tion of all rights and responsibilities under the pro-
18 ceeding, a statement of all relevant details of the al-
19 legation, and a specific statement of the sanctions
20 which may be imposed.

21 “(2) The institution shall provide each person
22 against whom the allegation is made with a mean-
23 ingful opportunity to admit or contest the allegation.

24 “(3) The institution shall ensure that all parties
25 to the proceeding have access to all material evi-
26 dence, including both inculpatory and exculpatory

1 evidence, not later than one week prior to the start
2 of any formal hearing or similar adjudicatory pro-
3 ceeding. Such evidence may include but is not lim-
4 ited to complainant statements, third-party witness
5 statements, electronically stored information, written
6 communications, social media posts, and demonstra-
7 tive evidence.

8 “(4) The institution shall permit each party to
9 the proceeding to be represented, at the sole expense
10 of the party, by an attorney or other advocate for
11 the duration of the proceeding, including during the
12 investigation of the allegation and other preliminary
13 stages prior to a formal hearing or similar adjudica-
14 tory proceeding, and shall permit the attorney or
15 other advocate to ask questions in the proceeding,
16 file relevant papers, examine evidence, and examine
17 witnesses (subject to paragraph (5)).

18 “(5) The institution shall permit each party to
19 the proceeding to safely confront witnesses, includ-
20 ing the complainant, in an appropriate manner, in-
21 cluding by submitting written questions to be asked
22 by the person serving as the adjudicator in any for-
23 mal hearing or similar adjudicatory proceeding, ex-
24 cept that it shall presumptively improper for any
25 person to make any inquiry about the sexual history

1 of the individual reporting the covered allegation
2 (other than an inquiry made by the individual
3 against whom the allegation is made, or such indi-
4 vidual’s counsel or advocate, about the sexual history
5 between such individual and the individual reporting
6 the covered allegation).

7 “(6) The institution shall ensure that the pro-
8 ceeding is carried out free from conflicts of interest
9 by ensuring that there is no commingling of admin-
10 istrative or adjudicative roles. For purposes of this
11 paragraph, an institution shall be considered to com-
12 mingle such roles if any individual carries out more
13 than one of the following roles with respect to the
14 proceeding:

15 “(A) Victim counselor and victim advocate.

16 “(B) Investigator.

17 “(C) Prosecutor.

18 “(D) Adjudicator.

19 “(E) Appellate adjudicator.

20 “(b) STANDARD OF PROOF.—An institution of higher
21 education may establish and apply such standard of proof
22 as it considers appropriate for purposes of any adjudica-
23 tion carried out as part of an institutional disciplinary pro-
24 ceeding under this section.

25 “(c) JUDICIAL REVIEW.—

1 “(1) PRIVATE RIGHT OF ACTION.—Any indi-
2 vidual who is aggrieved by a decision to impose a
3 sanction under an institutional disciplinary pro-
4 ceeding under this section may bring a civil action
5 in an appropriate district court of the United States,
6 but only if the action is brought not later than 1
7 year after the date on which the individual received
8 final notice of the sanction imposed on the individual
9 under the proceeding.

10 “(2) STANDARD FOR REVIEW.—In any action
11 brought under this subsection, the court may find
12 for the plaintiff only if the court finds that the im-
13 position of the sanction was arbitrary, capricious, or
14 contrary to law.

15 “(3) RECORDS.—As soon as practicable after a
16 civil action is filed under this subsection, the institu-
17 tion of higher education involved shall forward the
18 administrative record of the institutional disciplinary
19 proceeding to the court.

20 “(4) DAMAGES AND PREVAILING PARTY
21 FEES.—In any civil action under this subsection, the
22 court may award the prevailing party (other than
23 the institution of higher education) compensatory
24 damages, reasonable court costs, attorney fees, in-

1 cluding expert fees, and any other relief in equity or
2 law that the court deems appropriate.

3 “(d) PUBLICATION IN STUDENT HANDBOOK.—Each
4 institution of higher education which is subject to this part
5 shall publish annually in the institution’s Student Hand-
6 book (or equivalent publication) a statement of the proce-
7 dures applicable to institutional disciplinary proceedings
8 under this section, and shall publish such statement in the
9 form of a contract between the institution and its students
10 and student organizations.

11 “(e) NO RIGHT TO PAID ADVOCATE.—Nothing in
12 this section shall be construed to create a right for any
13 individual to be represented by an attorney or other advo-
14 cate at an institution of higher education’s expense.

15 **“SEC. 164. SPECIAL RULES FOR IMPOSITION OF INTERIM**
16 **SANCTIONS.**

17 “(a) PERMITTING INSTITUTION TO IMPOSE INTERIM
18 SANCTIONS.—

19 “(1) IN GENERAL.—Notwithstanding section
20 163, an institution may impose interim sanctions
21 against the subject of the allegation with respect to
22 the allegation (including temporary suspensions, no
23 contact orders, adjustments of class schedules, or
24 changes in housing assignments) and carry out in-
25 vestigations and adjudications with respect to the

1 imposition of such sanctions, but only if the institu-
2 tion determines that the imposition of such a sanc-
3 tion is a reasonable measure to promote campus
4 safety and student well-being.

5 “(2) SPECIAL RULES FOR DURATION OF PERI-
6 ODS OF TEMPORARY SUSPENSIONS.—

7 “(A) STUDENTS.—Subject to paragraph
8 (3), if the subject of an allegation is a student,
9 an institution may impose a temporary suspen-
10 sion for a period of not more than 15 days as
11 an interim sanction under this subsection, and
12 may extend the suspension for additional peri-
13 ods of not more than 30 days per period if, pur-
14 suant to a hearing held in accordance with the
15 requirements of section 163 for each such addi-
16 tional period, the institution finds that exten-
17 sion is necessary because the student poses an
18 immediate threat to campus safety and student
19 well-being.

20 “(B) STUDENT ORGANIZATIONS.—If the
21 subject of an allegation is a student organiza-
22 tion, an institution may impose a temporary
23 suspension for a period of not more than 10
24 days on the operations of the organization as
25 an interim sanction under this subsection, but

1 only if the institution determines that the orga-
2 nization has engaged in activity that presents a
3 significant risk to the health and physical safety
4 of campus community members, and that the
5 imposition of the suspension is not done merely
6 for punitive purposes.

7 “(3) PERIOD IN WHICH INTERIM SANCTION IS
8 IN EFFECT.—An interim sanction imposed under
9 this subsection with respect to an allegation shall
10 terminate no later than the conclusion of the pro-
11 ceedings carried out in accordance with section 163.

12 “(4) PROHIBITING IMPOSITION OF INTERIM
13 SANCTIONS UPON JOINT REQUEST OF ALLEGED VIC-
14 TIM AND LAW ENFORCEMENT.—An institution may
15 not impose an interim sanction under this subsection
16 with respect to a covered allegation during any pe-
17 riod for which the alleged victim and the law en-
18 forcement agency which is investigating the allega-
19 tion submit a joint request to the institution to not
20 impose such an interim sanction.

21 “(b) SAFE HARBORS.—

22 “(1) INSTITUTIONS.—No institution of higher
23 education which is subject to this part shall be con-
24 sidered to have violated any provision of title IX of
25 the Education Amendments of 1972 (20 U.S.C.

1 1681 et seq.) or any policy or regulation imple-
2 menting any such provision on the grounds that the
3 institution deferred to a law enforcement investiga-
4 tion at the request of law enforcement personnel, to
5 the extent that the institution was prohibited under
6 this section from initiating or carrying out any insti-
7 tutional disciplinary proceeding with respect to the
8 allegation.

9 “(2) STUDENTS.—An institution of higher edu-
10 cation which is subject to this part may not impose
11 a sanction on a student who is a victim of, or a by-
12 stander witness to, an act of sexual violence on the
13 grounds that the student engaged in conduct prohib-
14 ited under the institution’s code of conduct (other
15 than violent conduct) if the institution learned that
16 the student engaged in such conduct as part of a re-
17 port of a covered allegation which was made in good
18 faith by the student to an agent of the institution.

19 “(c) NO EFFECT ON CIVIL REMEDIES.—Nothing in
20 this section or section 163 may be construed to limit the
21 authority of any person to seek a civil remedy in a court
22 of competent jurisdiction with respect to any covered alle-
23 gation.

1 **“SEC. 165. PRESERVATION OF SINGLE-SEX EXEMPTION FOR**
2 **STUDENT ORGANIZATIONS.**

3 “(a) RESTATEMENT OF CONGRESSIONAL POSITION
4 ON TITLE IX AND SINGLE-SEX ORGANIZATIONS.—Con-
5 gress finds as follows:

6 “(1) The enactment of title IX of the Education
7 Amendments of 1972 (commonly known as ‘title
8 IX’) continues to be a vital element of ensuring all
9 Americans have equal access to higher education.

10 “(2) The exemption under title IX that allows
11 single-sex organizations to continue to flourish at in-
12 stitutions of higher education is still essential to de-
13 veloping a wide range of enrichment opportunities
14 for students to learn and grow.

15 “(3) While title IX has done much to provide
16 opportunities for women and men alike, the single-
17 sex exemption is a part of that tapestry of opportu-
18 nities, and institutions of higher education may not
19 take actions that undermine this single-sex exemp-
20 tion.

21 “(b) PROHIBITING INSTITUTIONS FROM REQUIRING
22 SINGLE-SEX STUDENT ORGANIZATIONS TO WAIVE TITLE
23 IX PROTECTIONS.—An institution of higher education
24 which is subject to this part may not—

25 “(1) require a student organization which is au-
26 thorized under section 901(a)(6)(A) of the Edu-

1 cation Amendments of 1972 (20 U.S.C.
2 1681(a)(6)(A)) to limit its membership to individ-
3 uals of one sex to admit individuals as members who
4 do not meet the organization's membership require-
5 ments;

6 “(2) compel a student organization or the gov-
7 erning body of a student organization that is itself
8 comprised of single-sex organizations to accept orga-
9 nizations or individuals that do not meet the organi-
10 zation's or governing body's membership qualifica-
11 tions; or

12 “(3) require an organization which is covered
13 by section 901(a)(6)(A) of the Education Amend-
14 ments of 1972 (20 U.S.C. 1681(a)(6)(A)) to waive
15 its coverage under such section as a disciplinary or
16 punitive measure.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to allegations made
19 on or after the expiration of the 1-year period that begins
20 on the date of the enactment of this Act.

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