Honorable Andy G. Beshear
Governor of the Commonwealth
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

April 1st, 2022

Dear Governor Beshear,

My name is Michael Frazier, and I have the distinct privilege to serve as Executive Director for the Kentucky Student Rights Coalition (KSRC). On behalf of our organizations and sixty-four student organization members, I write to ask for you to stand up for Kentucky's public college students, survivors of sexual violence, and support HB290, The Kentucky Campus Due Process Protection Act.

The Kentucky Student Rights Coalition is an organization from each public university in Kentucky. KSRC has sixty-four student organization members from across the Commonwealth, including one student government organization at a private college, LGBTQ organizations, Pro-Life students groups, student organziations that advocate for reproductive freedom, Kentucky College Democrats and Kentucky Federation for College Republicans.

As you can see, our organization is different. As a student at the University of Kentucky and leader of multiple LGBTQ-coalitions on campus, I co-founded the organization after seeing the voices of Kentucky's college students were not being represented in Frankfort. While the institutions of Kentucky were abundantly represented, as shown in the case involving the Kentucky Kernel, the interest of the institution does not necessitate the interest of the students. Our organization formed and became one where student leaders from Kentucky's colleges gather to review what is happening in our state government as it relates to higher education, and is dedicated to ensuring the voices of Kentucky's college students are represented in Frankfort.

Members of the organization are vastly different from one another, as you can imagine that our members even vehemently disagree with one another. We, however, have come together to stand up for the fundamental rights and protections for one another. Our members have joined together and have the primary goal to protect students' free speech and expression rights, due process rights, privacy, accessibility, transparency and equitable education opportunities in Kentucky.

HB290, the Kentucky Campus Due Process Protection Act, Currently, is our organization's number one legislative priority. Since 2020, our organization has teamed up with legislators, the Kentucky Association of Sexual Assualt Programs (KASAP) and the Foundation for Individual Rights In Education (FIRE) to address the many issues impacting students when going through non-academic student code of conduct and resident life hearings.

Any student who walks through the door to enter a student code of conduct hearing, our public universities have made it clear that they put everything on the line. The student's education is on the line. Thousands of dollars in tuition and housing are on the line. Indeed, the institutions put students' futures, including their economic opportunities available to them for potentially the rest of their lives on the line.

In the course of three years, Representative Banta, staff with the House Judiciary, LRC staff, and our coalition closely reviewed each school and their policies, their housing policies, their residential contracts, their appeals procedures, reviewed what departments are over these processes, and the millions of dollars that fund them.

At these hearings, students are often only provided 24 hours of notice of hearing, sometimes 48 hours if they're lucky. The administrator holds all of the power and the rules are often based upon who is the adjudicator. As pointed out by the Foundation for Individual Rights In Education during a review for all procedures at Kentucky's colleges and universities, our institutions maintain policies that routinely deny their students' basic due process rights. Most colleges' policies allow them to conceal exculpatory evidence and deny students accused of misconduct the right to active representation by an attorney or an advisor. Students at nearly half of the commonwealth's colleges are denied the express presumption of innocence, and some are even denied hearings altogether.

Students are subject to inconsistent rules and procedures that often vary depending on the administrator holding the hearing. No university's disciplinary process is the same. No student's hearing is subject to the same standards as their peers. There is no consistency or standards for punishments or sanctions. In these hearings, these administrators and student affairs professionals have a total dominion and final say in determining a student's future. The current process creates an unseemly power imbalance, harming students for the benefit of an easier and quicker process for the university.

Some try to label these hearings as educational. But I doubt that any student or their family pays their tuition dollars to learn the hard way that they can be railroaded out of their futures. They pay for an education that can open doors, not a life lesson that will slam them shut. No experience can be labeled as educational when it creates a high-risk situation that puts the future of students, their families, and the future of Kentucky all at risk.

We have allowed this to be the standard for far too long. We've heard horror stories about how these processes are abused at each public institution. From students dealing with harassment being denied counsel at U of L; students in a campus-wide email being threatened to be kicked out of residence halls without question or refund at EKU; to UK holding a hearing against a student without him present and preventing him from registering for his senior year of classes. Our institutions have had complete discretion since 1978. It's time for an update.

HB290 creates a right to timely notice, the right to have written notice of the charges and rights afforded, right to be present and participate meaningfully at each phase of the process, to see and have access to the evidence against them, to cross-examine through counsel, and the ability to appeal.

Representative Banta worked with Kentucky Association of Sexual Assult Programs (KASAP) to ensure HB290 protects students on campus who are survivors of sexual violence. HB 290 gurantees due process rights to victims that would constitute sex discrimination as defined by Title IX, ensureing both the accused and the complaintant recieve equal rights. The legislation does follow the Sixth Circuit's decision in Doe vs. Buam to allow cross-examination. We, however, take the steps to ensure survivors are protected when cross-examination of another student must be conducted through counsel or an impartial hearing officer. Due to our collaboration on the bill, KASAP has no issue with the bill.

HB290 will also require the universities to publish and report the number of student disciplinary hearings to the General Assembly every five years. Currently, according to the public institutions, no information collectively exists. The lack of information, or lack of willingness to provide the information by the universities, after a recent report from United Educators-group that insures risk liability for most institutions in Kentucky-reported how these

hearings disproportionately target and punish students of color. The report, however, does not isolate Kentucky and includes all their members and is data pulled from all public institutions nationally. .

The bill will require our public institutions to provide the total number and percentage of disciplinary proceedings that resulted in various student outcomes, including suspension and expulsion, and a break down based upon race and sex. The report must also indicate the basic demographics of students included in that number and the general nature of the violations in the matter. To ensure the FERPA rights of students are protected, HB290 requires the information to be protected on a five-year cycle and establishes an exemption process for universities through the Attorney General's office.

HB290 has earned support from 64 student organizations across this state, including being endorsed by every chapter and the statewide organizations for Kentucky College Democrats and the Kentucky Federation of College Republicans. During the bill's hearings, the presidents of college republicans and college democrats at the University of Louisville teamed up to discuss their experience on campus and to speak in favor of HB290.

Representative Banta was able to find ways to address most requests from the universities. We, however, were unwilling to yield on three of their requests. Representative Banta denied the request by the public universities to remove the provisions that afforded students the presumption of innocence, the right to bring counsel and remove all reporting requirements.

To be clear, HB290 still gives the universities wide discretion. The bill's strongest protections only apply to cases with three-day suspensions or longer, expulsion, or termination from resident halls on the line. We don't decide what violations merit these punishments. That, at the end of the day, is at the discretion of the university. The universities of Kentucky will choose which violations warrant any penalty that would require them to follow the legislation. Nonetheless, HB290 will create a standard process for disciplinary processes and sanctions that ensures fairness for those who face these hearings.

But, plain and simple, we should hold students accountable for offenses. We, however, should also make sure that we hold students accountable through a fair, consistent system that recognizes what's at stake. As a Kentuckian, as a first-generation college students, as a survivor of sexual violence, as an advocate for both the LGBTQ comminity and students' rights – my priority is to protect Kentucky's ALL of college students. The Kentucky Campus Due Process Protection Act is that guarantee.

I have included personal letters from students across Kentucky, a letter from myself written in my personal capacity, a one page FAQ sheet about the bill, and a detailed list of the changes requested we incorporated on behalf of the institutions.

Governor Beshear, we humbly ask you to help us in standing up for Kentucky's college students, their families, survivors and Kentucky's future s by either taking no action against the bill or signing HB 290 into law.

As always, I am grateful for your attention and consideration.

Respectfully,
Michael Frazier

Executive Director
Kentucky Student Rights Coalition

2020 Hugh M. Hefner Foundation
National Free Speech and Education Award Recipient
Honorable Andy G. Beshear
Governor of the Commonwealth
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

March 31st, 2022

Dear Governor Beshear,

My name is Liam Gallagher, I am a student at the University of Louisville and the President-elect of the UofL College of Arts and Sciences. I am also the chairman for college republicans at the University of Louisville chapter. I wanted to send you a letter today to call on you to sign House Bill 290 into law.

HB290 is a student rights bill, it is a bill designed to protect student's due process rights when going through disciplinary proceedings on the campuses of Kentucky's public colleges and universities. House Bill 290 is not a wildly radical bill that will change the way that we educate students. This bill does not make the job of universities more difficult, it does not impede public universities ability to discipline students. Instead it affords students rights that we would expect from any and all government institutions. The rights currently set out for students at our public institutions are inconsistent from one another and they vary from student to student depending on who sits in the chair.

HB290 sets a standard that Public colleges and universities would be required to follow. I do not want to sit here and bore you with the details of this bill since you have already heard them once today, but I would like to say that every right given to students in House Bill 290 is a fundamentally American right. These are rights that we would not dream of taking away from everyday Americans yet state law fails to afford these rights to our very best and brightest. Kentucky's public colleges and universities are one of the shining gems of our commonwealth, but they can and do need to do better.

My university the university of Louisville teaches about due process rights, they teach about equality and justice for all. What we are looking at here is not a small dispute between a school and its students, but a government institution reigning supreme with little to no due process protections in state law, and that is a scary

precedent. We are not here to stop universities from taking disciplinary action. We are here to ask the to stand up for the fair and equitable treatment of students in this Commonwealth.

HB290 not only protects the accused, but also victims on college campuses. During testimony in committee we heard from Julia Mattingly who was harassed at UofL by another student. When she went to the university administration they told her that she would have to act as her own counsel. House bill 290 would stop this from ever having to happen again. There are tons of stories from across our Commonwealth similar to Julia's. Sexual harrasment and assualt on college campuses are rampant, no student who is sexually harrased or assualted should be required to act as their own counsel. This is something that hurts the ability of victims to come forward. House Bill 290 stops this from happening. It gives every student the option to be represented by counsel.

House Bill 290 would put our great Commonwealth at the forefront of the student rights issue. It would show that we as a state take a stand and say "students, we have your backs." It is not often that we are ahead of the rest of the country on things like this, but now is our opportunity, and we must seize it. The sun shines bright on My Old Kentucky Home. It shines towards due process on college campuses. It shines towards more fair and equitable disciplinary hearings for all students. I humbly ask you again to sign House Bill 290 into law.

SIncerely,

Liam Gallagher

Political Science
University of Louisville
Chairman UofL College Republicans
College of Art & Sciences President-Elect

Honorable Andy G. Beshear
Governor of the Commonwealth
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

April 1st, 2022

Dear Governor Beshear,

Hi, my name is Julia Mattingly and I am a junior studying Rural Health at the University of Louisville, where I serve as Speaker of the SGA Senate and President of the University Young Democrats. I am contacting you urging you to **sign HB 290, the Kentucky Campus Due Process Protection Act, into law.**

I support this bill because I believe Kentucky universities putting their students first and ensuring them proper due process rights is long overdue. This became extremely apparent to me this past summer when I was subject to pervasive harassment and defamation by another UofL student. When I had sought out the Dean of Students Office for help, University attorneys reviewed my case and determined that my allegations did not rise to a violation of the Student Code of Conduct. A representative from the Dean of Students informed me that I could file a formal complaint and receive a Conduct Hearing, however, they told me I would have to act as my own attorney by collecting affidavits from all of those involved and preparing an oral argument to be presented to the board.

As an undergraduate Rural Health major who has absolutely no legal experience, I was shocked at the notion I was to represent myself at the hearing and was not allowed to seek help from legal counsel. Additionally, I was scared to be in the same room as the student who had been harassing me all summer and would have appreciated the ability to have legal counsel speak on my behalf. House Bill 290 addresses this exact issue. This bill requires universities to notify students of their right to be represented by counsel or, if required by Title IX, an adviser, at each phase of the investigation process.

Allowing students due process should not be a burdensome task for Kentucky universities. Due process for students is a guarantee of fairness, a core tenet of our country and of the Commonwealth of Kentucky. This legislation **does not hinder a university's ability to hold students accountable for offenses**, it simply asks that students are afforded the same due process rights on campus as they would be off-campus.

I kindly ask you to **sign HB 290 into law** for a guarantee of fairness for all of Kentucky's college students. Thank you.

Best,
Julia Mattingly
University of Louisville, '23

UofL Young Democrats, President
Louisville Political Review, Editor-in-Chief
UofL Student Government Senator & Speaker for the SGA Senate
she/her/hers
E: j0matt02@louisville.edu | 270.617.4805
Honorable Andy G. Beshear
Governor of the Commonwealth
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

April 1st, 2022

Dear Governor Beshear,

For two years, I've empathized with and appreciated your leadership with helping Kentuckians through Covid-19 and the tornados in Western Kentucky. No other Governor in our history has dealt with so much and your determination to get us through this doesn't go unnoticed. Thank-you.

My name is Joe Anderson and I'm a 1981 alumnus and volunteer advisor for a student organization at the University of Kentucky. I've been in this role for almost 14 years and through this time, had multiple experiences with assisting individual students and my fraternity through University of Kentucky's Student Code of Conduct and the judicial process in that Code. I've seen many abuses of power from university staff and administrators and when challenging this overreach by UK, you get caught in an endless and faceless bureaucracy that refused to listen, acknowledge or care to change Codes that abused students key rights. UK is a public university and to deny basic constitutional rights when charged with conduct violations is wrong. Yes, I understand the need for a Code of Conduct. It's the judicial process that must be corrected.

HB290 addresses the judicial process. I urge you to sign this Bill into law. Student's rights are being denied and this bill will correct a process that will give them a better opportunity to defend themselves when charges are baseless. I have many examples that include charges based on an anonymous report that even the University couldn't verify to removing members from university housing without any hearing. This Bill will address those and give our students a more open and fair chance to respond to conduct charges in the future.

Again, I appreciate what you do for our Commonwealth. Please sign the bill and show your support for our University students.

Sincerely,

Joe Anderson

3411 Woodstock Circle

Lexington, KY 40502

859-940-8123

Honorable Andy G. Beshear
Governor of the Commonwealth
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

Dear Governor Beshear

My name is Tate Ohmer. I am the Chief of Staff for the President of our student government at Transylvania University. In addition to my role at Transylvania, I serve as the elected president for Kentucky College Democrats, consisting of membership fro UK, UofL, Murray, K-State, EKU, Morehead, Transy, Lindsey Wilson, WKU, and NKU. Recently, myself and many College Democrats all across the state have been working to support the passage of many bills. We called legislators, sent out countless emails, built local support, and truly pushed towards a select few bills we thought would benefit us as college students. Of these bills, only one passed- House Bill 290. I understand it is currently on your desk, and I ask you- both as a college student and as President of the College Democrats- to sign it into law.

To be a college student today is to see how university administrations have acted like lords of their castles, prioritizing their own names and donations over the mental and physical safety of their students. Our organziation have heard countless stories of students at many institutions being betrayed by their college, being mistreated while seeking justice for sexual harassment and assault. Victims deserve rights, they deserve to be protected, and so colleges must be held accountable for their actions and failures.

I never want to hear another story of a student being told by a university administrator that her rape “didn’t count” because “if there isn’t penetration, then it doesn’t count”. I don’t want to ever hear again of a student being silenced and threatened by her school for going to the news with her story of being violently raped in her dorm by an outsider who walked in.

So, on behalf of college students all over Kentucky (and NOT college administrations), I encourage you do take a deep look at what HB 290 means for us, those who expect protection and justice from the institutions we pay tens of thousands of dollars to attend, and sign it into law.

Thank you,

Tate Ohmer

President, College Democrats of Kentucky
Chief of Staff
Student Government Association
Transylvania University

The Kentucky Campus Due Process Protection Act

Purpose: Establish minimum procedural requirements for postsecondary disciplinary proceedings to better protect student's educational interests.

Impact:

- **Basic due process rights**: to all students accused of a student discipline violation;
- **Victim due process rights:** to victims when the violation arises from criminal conduct or conduct that would constitute sex discrimination as defined by Title IX[1], which are equal to the rights of the accused;
- **Robust due process:** when the violation may result in:
    - *Suspensions 3 days or more, expulsion, or termination of a student's residence in campus housing;* and
- **Student Discipline Report:** Requires each public college or university to publish a report to provide transparent data on the institution's handling of student disciplinary matters to the Kentucky General Assembly every five years.

Basic Due Process Rights:

- Presumption of innocence;
- Written notice of: the charges, the student's rights; and each phase of the disciplinary process;
- Access to a complete record of the matter;
- To be present and participate meaningfully at each phase of the process;
- To be represented by counsel at the expense of the student at all phases of the process; and
- To fair and impartial treatment, including the right to an impartial hearing adjudicator.

Robust Due Process

- To participate in the hearing by:
    - Making opening and closing statements;
    - Presenting and see all evidence; and
    - Cross-examining testimony, except cross-examination of another student must be conducted through counsel or an impartial hearing officer;
- The right to appeal to the governing board or its designee for a final decision;

STUDENT DISCIPLINE REPORT: Must include the total number and percentage of disciplinary proceedings that resulted in various student outcomes, including suspension and expulsion. The report must also indicate the basic demographics of students included in that number and the general nature of the violations in the matter. Bill provided an exemption process to Universities through the AG's office

THIS BILL DOES NOT:

- Impede or delay law enforcement investigations;

[1] *Title IX establishes requirements for student disciplinary proceedings for allegations of sexual discrimination as defined by that Act, including but not limited to sexual harassment and assault. Title IX requires that complainants be afforded equal rights to the accused in student disciplinary proceedings.

- Impair an institution's ability to suspend or make an interim housing adjustment;
- Limit any additional rights afforded under federal law, including Title IX.
- Does not prevent universities from making reasonable accommodations or interim suspensions
- Does not prevent universities from enforcing contractual obligations, such as failure to pay.
- Does not prevent the universities from making reasonable accommodations or implementing interim suspensions.

Incorporation of Institutions' proposed changes into HB 290

Color code of right column:
Green- Change accepted as requested
Yellow- Change was incorporated in response to the concern but was not incorporated in the specific manner requested
Red- Change was rejected
No color- Change made that was not responsive to institutional feedback

Changes made in the House Committee Substitute are highlighted in Yellow.

Institutions' proposed changes to 21 RS HB 145	**Incorporation of Institutions' proposed changes into HB 290**	
Remove "to address criminal conduct or other conduct that would violate Title IX or other federal law if left unaddressed" from the definition of complainant.	**Proposed change was incorporated as requested**- The current version of HB 290 only requires that a complainant be a victim of a violation of the code for student conduct, as requested by the institutions. This definition of complainant triggers rights of participation further on in the bill intended to preserve the rights of victims. Page 1, Line 9.	✓
Exclude KCTCS from the scope of the bill. The rationale for this proposal is that KCTCS is unique from other postsecondary institutions in the state in that they do not have on-campus housing and other licensing boards have authority over disciplinary issues.	**Proposed change was incorporated as requested-** the definition of "institution" does not include KCTCS in the current version of the bill. The sponsor agrees that KCTCS is too different from the public universities contained in the bill to extend the same rules and requirements. Page 1, Line 10.	✓
Include the phrase "governing board of a public postsecondary education institution" as opposed to "governing board" throughout the bill.	**Proposed change was incorporated as requested-** The current version of HB 290 specifically defines "governing board" with relation to each institution within the scope of the bill. This defined term is intended to avoid repetition throughout the bill and clarify the use of the phrase "governing board" in accordance with the institutions' request. Page 1, Line 15.	✓

Exclude academic offenses from the scope of the bill. The rationale for this proposal is that the institutions believe academic offenses should be handled by the institution, as permitted by Supreme Court rulings.	**Proposed change was incorporated as requested-** The code for student conduct must clearly set forth the rules for nonacademic student conduct. This change aligns with court cases distinguishing higher procedural protections for nonacademic offenses and is responsive to the concerns raised by the institutions. Page 2, Line 2	✓
Remove the requirement that the institutions prove "every element of the alleged violation." No rationale was submitted for this proposal but the duty was replaced with the occurrence of a "finding of responsibility."	**Proposed change was not incorporated:** The sponsor feels strongly that if an institution is unable to prove every element of the alleged violation, than the institution is not able to prove that a violation occurred. Adequate proof is a basic tenant of due process; therefore, this proposal from the institutions was not incorporated in the current version of HB 290. Page 2, Line 9	
The institutions were concerned about the rights in subsection (3) of Section 1 being too burdensome. The institutions proposed changing the threshold for subsection (3) to a suspension of 10 days or more. Change was not proposed by the institutional draft but was verbally requested at the meeting.	**New change to address a general concern:** The rights afforded under the bill previously applied to all disciplinary proceedings. Now, academic offenses are excluded. For all other offenses, the rights afforded under the bill are only triggered "when a finding of responsibility could result in a suspension, expulsion, or termination of a respondent's residence in campus housing." Page 2, Line 4 To put this in context, the rights the institutions are concerned about affording prior to a suspension of 1-9 days are fundamental rights such as the presumption of innocence, written notice before scheduled events, maintenance of and access to an administrative file that includes exculpatory and exculpatory evidence, the right to be present and participate meaningfully at material phases of the disciplinary process, and the right to bring support persons, like a parent, to those phases. The sponsor feels that any length of suspension is sufficiently significant to the student's academic career so as to trigger such basic rights are afforded under subsection (3). The enhanced rights afforded under subsection (4) bill were previously triggered when a finding of responsibility could result in a suspension, expulsion, or termination of a respondent's residence in campus housing." This section has been amended to only apply if the suspension is 3 days or more. Page 4, line 13.	
Replace "participant" with "respondent" to require only that a respondent be given specific written notice, including notice of rights during the disciplinary proceedings.	**Proposed change was not incorporated-** The bill sponsor strongly believes that victims should have proper notice in postsecondary disciplinary proceedings, especially in the context of Title IX. As the definition of complainant requires a complainant to be a victim of a violation, as opposed to a mere witness, the sponsor felt it was proper to preserve the rights of the complainant/victim throughout the bill. Therefore, this proposal from the institutions was not incorporated in the current version of HB 290.	X

	Page 2, Line 15 and throughout.	
Eliminate the timeframe of notice required, which was previously 3 business days prior to a scheduled event at which the participant was expected to appear. The rationale was that this notice requirement would impede the institution's ability to investigate alleged violations.	**Proposed change was not incorporated-** the notice requirement for any scheduled event was remains 3 business days because: • Students have a genuine interest in being present and participating meaningfully at each phase in the disciplinary process. The sponsor believes that notice is essential to fulfilling that right. • Statements made by a student can be admissible against them in a criminal case. Therefore, students have a vested interest in consulting with legal representation prior to any administrative meeting that serves and investigative purpose. • This requirement only applies to *scheduled events;* • This section does not limit the ability of law enforcement to investigate, as clearly stated under the exclusion sections. Therefore NOTHING in this bill limits law enforcement's investigation of criminal activity. For these reasons, the sponsor would not agree to eliminate the notice requirement entirely. Page 2, Line 19.. This notice requirement is tempered by the fact that there is language further on in the bill which specifically states that nothing in the bill shall be intended to impede or delay *law enforcement's* investigation of a crime or the ability of the institution to take reasonable interim measures. Therefore, law enforcement would not be subject to the 1 business day delay, only the institution. (This would not include a sworn law enforcement agency affiliated with the institution.) In the meantime, the bill is clear that the school can temporarily suspend the respondent and/or relocate his or her housing. This preserves the institution's concern of safety during a timely investigation while also protecting the participants' interests described above.	X
Clarify the meaning of the term "record." At the meeting, there was confusion on the meaning of this term that was reflected in several proposals submitted by the institution. It was stated that the term record was intended to mean administrative file that is updated throughout the process. That cleared up several concerns brought forth by the institutions. This includes timing concerns	**Proposed change was incorporated as requested:** the term record is replaced with administrative file and the nature thereof is clarified. Page 2, Line 23. Clarifying the nature of the administrative file included adding a provision that requires an institution to notify a participant when the record is updated with new documents or evidence. It also clarifies that the administrative file shall be updated to include an audio or video recording of any hearing "ultimately held in the matter."	✓

raised by the institutions with regard to the inclusion of a hearing recording.		
Remove the reference to "pleadings." The rationale for this proposal was that the term "pleadings" is too litigious. The proposal merely removed the term without substituting another word that would apply to documents filed by the parties.	**Proposed change was not incorporated but the concern was reflected in other changes-** the term pleading is replaced with "document submitted by a participant." This removes the term specifically objected to by the institutions but preserves the right of participants to maintain access to any document that would contain evidence and/or arguments in the disciplinary process. Page 2, Line 24. The institutions also wanted to strike the phrase "in the institution's possession or control relevant to the alleged violation or the institution's investigation thereof." This phrase is significant because only the contents of the administrative record can be considered to determine that a violation has occurred. Therefore, this phrase is maintained in the current version of HB 290.	✓/ X
After the meeting, concerns were addressed regarding whether institutional memorandum and attorney work product would fall under the definition of documents required to be incorporated into the administrative file.	HB 290 specifically states that the administrative file "shall not include privileged documents or internal 4 memorandums that the institution does not intend to introduce as 5 evidence at any hearing on the matter."	
Remove the requirement that the administrative record include an audio or video recording of a disciplinary hearing. The institutions were concerned about the time and expense of creating and maintaining these records.	**Proposed change was not incorporated but concern was addressed with language to limit impact-** language has been added to clarify that the institution has the choice between: audio recording, video recording, or a written transcript. There is no duty for the institution to use more than one format. In the process of researching disciplinary hearings, the sponsor learned it is standard practice to record these types of hearings. This practice makes sense, as having a clear record of the hearing saves appellants the time and cost of litigating questions of fact of what did and did not occur at a hearing. The sponsor feels strongly that the consequences on the line for a student far outweigh any inconvenience a recording may impose upon the institution. The purpose of this bill is to protect and enhance the rights of students involved in these types of proceedings. The most effective means of determining whether that occurred at a hearing is an audio or video recording. Therefore, the sponsor did not incorporate this proposal in the current version of HB 290. Page 3, Line 1.	X

Remove the requirement that access to the administrative file be continuous. The rationale is that the institutions wanted to be able to impose reasonable restrictions and felt that continuous could be implied to require 24 hour access. The institutions proposed that the term continuous be stricken without replacement.	**Proposed change was not incorporated but the concern was reflected in other changes-** the term "continuous" is replaced with "continuing." The use of the term "continuing" is intended to clarify that, although access need not be 24/7, it should not be unreasonably restricted as the hearing approaches. This would mean that a participant could access the administrative file multiple times. The sponsor felt this is critical to the participant's ability to participate meaningfully in the disciplinary process. Page 3, Line 7.	✓/ X
Reduce the length of time a participant could access an administrative file from 10 days to 5 days prior to a hearing. The institutions' rationale was that there should be sufficient time to investigate the complaint to determine whether to proceed with the complaint.	**Proposed change was not incorporated as requested**: The sponsor recognized the institution's concern with having sufficient evidence to determine whether to proceed in the disciplinary process prior to granting a participant access to the administrative file. Therefore, this proposal was incorporated in part. The length of time was reduced to 7 days, unless otherwise specified under Federal Law. Title IX requires 10 days, and if the institutions can maintain that for some of the most serious allegations that can occur on college campuses, they can certainly accommodate the shorter time frame in other cases that could result in a suspension, expulsion, or termination of campus residence. Page 3, Line 6.	✓
	The current version of HB 290 contains pre-hearing evidentiary deadlines prior to a hearing on a violation that may result in a suspension, expulsion, or termination of residence in campus housing. This change was not requested by the institutions. Note: Title IX requires pre-hearing evidentiary disclosures, too. Therefore, this change is not unprecedented.	
Insert language that states that "evidence… presented at any disciplinary hearing may be considered in the determination of whether a violation occurred." The previous language restricted the determination to "evidence contained in the record." In speaking with the institutions, this proposal was rooted in the confusion over the nature of the record, as described above.	**Proposed change was incorporated in-part:** As mentioned above, the term "record" was replaced with "administrative file" and changes were made throughout the section to clarify that the administrative file is a file that encompasses the entire disciplinary process, not just the pre-hearing discovery. This section was amended to provide that: "contained in the administrative file that is determined by the hearing officer to be relevant and admissible may be considered in the determination of whether a violation occurred, including but not limited to the audio recording, video recording, or transcript of any disciplinary hearing ultimately held in the matter." The sponsor feels this addresses the institutions' concern without eliminating the stringent adherence to a fair and complete administrative record. Page 3, Line 6	✓/ X

Insert language that states that the institution is only required to maintain the administrative file for five years. The rationale offered by the institutions was that they did not want the bill to create the perception that the records must be maintained into perpetuity. HB 290 had previously been silent on this issue.	**Proposed change was not incorporated but the concern was reflected in other changes-** The current law governing maintenance of school disciplinary files is set forth in the Records Retention Schedule, State University Model. This requires that student discipline records related to an expulsion be maintained permanently. All other records must be maintained until the later of: • 3 years after graduation or the student's last date of attendance; or • 3 years after the terms of the sanction are complete. The sponsor saw no need to deviate from the current records retention schedule, as this preserves the records for the duration of time the respondent would be on the campus. However, to reflect the institution's concern that silence in the bill could be misconstrued, the current version of HB 290 includes the specific language currently set forth in the State University Model. This ensures that the statute is preserved even if the records retention schedule were to be amended later. (The records retention schedule is incorporated by reference into 725 KAR 1:061.) **HCS CHANGE:** The House Committee Substitute includes language that clearly states that the records retention schedule is not intended to abridge federal law, which requires Title IX records to be maintained for 7 years. Page 3, line 12	
Remove the requirement that a participant be permitted to be present and participate meaningfully "at each phase of the disciplinary process." Instead, the institutions proposed limiting this right to only a conduct hearing.	**Proposed change was not incorporated-**The right to be present and participant meaningfully at each phase of the disciplinary process is central to the procedural protections afforded by this bill. It is the goal of the sponsor to preserve the rights of students at every step of the disciplinary process, not just a hearing ultimately held in the matter. Therefore, the sponsor did not restrict this right of students as proposed by the institutions in the current version of HB 290. Nor is the sponsor willing to consider limiting this right to only a conduct hearing. Page 3, line 27	X
Remove the requirement that a participant be afforded fair and impartial treatment at each phase of the disciplinary process.	**Proposed change was not incorporated but the concern was reflected in other changes-**The right to fair and impartial treatment is a basic tenant of due process. It is the goal of the sponsor to afford students fair and impartial treatment at every step of the disciplinary process. Therefore, eliminating the requirement for fair and impartial treatment would undermine the entirety of the bill. The sponsor feels strongly that this would be unacceptable and has not incorporated the institutions' proposal to eliminate the requirement for fair and impartial treatment from the current version of HB 290. Page 4, Line 2	✓/ X

	However, the sponsor has clarified what fair and impartial treatment would require with regard to the qualifications of any person that plays an adjudicatory role. However, this amendment does not reflect or address the institution's primary concern. Page 4, Line 24.	
Strike the language that a student may waive the confidentiality to permit the attendance of a support person, such as a family member. The institutions rationale was that a student cannot waive another student's privacy rights.	**Proposed change was not incorporated but the concern was reflected in other changes-** The language of 21 RS HB 145 and 22 RS HB 290 both restrict the right to waive confidentiality on the condition that doing so would not "violate the privacy rights of another student." Therefore, it is the sponsor's position that the rationale offered to justify the institutions' position was already addressed on the face of the bill. Moreover, Title IX currently requires that sex-discrimination complainants be given this right- so the responsibility of the institution to accommodate this type of waiver is nothing new. Page 5, Line 7 However, to acknowledge the concern of the institutions the current version of HB 290 does include a minor change that adds "limited waiver" instead of "waiver" to underscore this point that this right is subject to limitations.	✓/ X
Limit the number of support persons, such as parents, that may attend a material phase of the disciplinary process with a participant.	HCS CHANGE: The House Committee Substitute limits the number of support persons that may accompany a participant to 2. Page 5, line 2	

Strike "termination of a respondent's residence in campus housing" as a trigger for a heightened standard of procedural protections. The primary rationale offered for this proposal was that breach of contract arising from non-payment is the most common cause of termination of a respondent's residence in campus housing. The institutions stated that requiring a disciplinary hearing for each breach of contract case would create an undue burden upon the institutions. Another concern was that a restraining order could require the institution to terminate a students' housing contract. The institutions were also concerned about their ability to take reasonable interim action regarding housing arrangements.	**Proposed change was incorporated in-part:** The sponsor agrees that breech of campus housing contract claims were never intended to be within the scope of this bill. Therefore, the current version of HB 290 is specifically limited to termination of a respondent's residence in campus housing that arises from a violation of the code for student conduct. This preserves the heightened standard of procedural protections for students when campus housing is at stake without ignoring the primary concerns raised by the institutions. Page 4, Line 11 Concerns addressed: Page 8, lines 13. The sponsor further agrees that judicial orders, such as a restraining order, which make accommodating a students' campus housing contract impossible, were never intended to be within the scope of the bill. Therefore, language has been added to clarify that nothing in this section shall be interpreted to limit the ability of an institution to terminate a students' residence in campus housing pursuant to a judicial order. Page 8, line 8. Moreover, the bill specifically preserves the ability of an institution to "take reasonable interim actions necessary to ensure the physical safety of members of the campus community during a timely investigation and adjudication of a student disciplinary issue." The bill sets forth a procedure to ensure that the interim measures are justly applied. Page 7, line 14.	✓/ X
Strike "termination of affiliation of a student organization" as a trigger for a heightened procedural protections set forth in subsection (3)(e). The primary rationale was that the hearing procedures set forth in the bill are overwhelmingly focused on individual rights and proceedings.	**Proposed change was incorporated as requested**: The sponsor maintains that institutions' owe student organizations certain responsibilities when considering whether to terminate their affiliation with those organizations. However, the sponsor recognizes the concerns raised by the institutions and believes that student organizations should be addressed by separate language in another bill. As the rights of student organizations are protected by the Campus Free Speech Protection Act and separate laws apply to the investigation of hazing violations, the sponsor has agreed to incorporate the institutions' proposal as requested. Page 4, line 9.	✓

Limit application of subsection (3)(e) to suspensions of 10 days or more, the Supreme Court's threshold for due process in a student disciplinary proceeding. Last year's bill applied to any length of suspension.	**Proposed change was incorporated in part.** The Supreme Court's holding is relevant to constitutional due process. This bill establishes statutory requirements for procedural protections that the Sponsor believes go above and beyond the bare minimum set by the Supreme Court. The Sponsor considered the institution's position, and in an effort to compromise, amended the current version of HB 290 to trigger the enhanced rights at a suspension of 3 days or more. 3 days was not an arbitrary choice. Many of the student handbooks contain provisions which permit a school to award a grade of "incomplete" if a student misses 3 or more classes. Therefore, in application, the difference between a suspension of 3 days, 10 days, or even a semester, could be immaterial to the academic impact on a student. The sponsor believes that any suspension that could result in automatic failure/incomplete in a course because the length suspension deserves more rigorous protections for the student.	
Replace "participant" with "respondent" with regard to who is entitled to receive additional procedural protections when the heightened standard is triggered.	**Proposed change was not incorporated-** As mentioned above, the bill sponsor strongly believes victims' rights should be preserved in the disciplinary process. As the definition of complainant requires a complainant to be a victim of a violation, as opposed to a mere witness, the sponsor felt it was proper to preserve the rights of the complainant/victim throughout the bill. Moreover, Title IX requires that a sex-discrimination complainant be afforded all the same rights as the respondent in those cases. The sponsor believes that this protection should not be limited based upon whether the offense meets the definition of sex-discrimination outlined in Title IX. Rather, all victims should be afforded this right. Therefore, this proposal from the institutions was not incorporated in the current version of HB 290. It is important to note here that, per the institution's request, academic offenses have been excluded from the scope of the current version of HB 290. So victims of academic offenses, such as plagiarism, would not trigger the heightened procedural protections set forth in this bill. The sponsor believes that the bill is sufficiently tailored to justify preserving all participants' rights.	X

Limit the right to an advisor to only permit representation by an attorney in a disciplinary hearing when required by Title IX. Provide that the right to an advisor shall not be interpreted as a right to be represented by counsel. The rationale offered by the institutions was that student disciplinary proceedings are primarily academic exercises in that students often learn from the process and consequences. The institutions submit that affording the right to representation makes the process more litigious and less educational.	**Proposed change was not incorporated**- The sponsor maintains that judicial precedent is clear that student disciplinary proceedings are not academic exercises; therefore, the rationale offered by institutions to justify the restriction of students' right to council has no lawful basis. The fact that a student may learn from participation in the process is immaterial to the true nature of the proceeding in law and fact- to determine guilt and punishment for an alleged violation of the institutions' code for student conduct. (Just as any learning derived from a criminal trial is immaterial to the true nature of the proceeding.) Disciplinary proceedings can have a significant legal impact on students. This impact can carry life-long consequences that follow a student outside the disciplinary process. For example, statements made throughout the course of these proceedings are admissible in a criminal proceeding against a student. Moreover, a student may not understand that any statements made to a non-attorney advisor would not be protected by the privilege that would be afforded if the statements had been made to an attorney-advisor. The legal rights jeopardized by a student's inadequate representation are too great to justify being outweighed by the institutions' desire to limit access to counsel and expedite the disciplinary process. When a heightened standard for procedural protections is triggered by the significance of the potential consequences to a participant, the current version of HB 290 preserves participant's right to be represented by counsel *at the participant's own expense.* This right to adequate representation is absolutely critical to protecting the purpose and integrity of HB 290. Further, the language does not require the institution to assume the cost of the participant's representation. (Although nothing in the bill would prevent the institution from doing so if the institution's concern is equity in the management of disciplinary proceedings across the board.) Limiting a student's representation to non-attorney advisors outside of the context of Title IX, as requested by the institutions, may not be within the General Assembly's authority. The Kentucky Supreme Court has the sole authority to define what constitutes the practice of law in Kentucky. Although the federal law permits a non-attorney advisor in the instance of Title IX, the sponsor is uncertain that this right can be generalized to *require* non-attorney advisors in all other contexts. Given extreme nature of the consequences that trigger the heightened standard of procedural protections that affords the existing right to representation in the bill, the Kentucky Supreme Court would be well within its purview to determine that serving as an advisor in a disciplinary proceeding constitutes the practice of law. Therefore, the legal rights implicated during this type of proceeding would necessitate that an *advisor* be capable of offering legal *advice.* Such a ruling would completely eliminate any rights to an advisor or representation outside of the context of Title IX, which would be unacceptable to the sponsor. Page 4, line 13.	X

Strike the "rape shield" language which provides that questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant except under limited circumstances as described in Title IX. `	**Proposed change was not incorporated**-The Bill sponsor does not understand what rationale the institutions would have for eliminating the rape shield provision and is unwilling to subject victims to questions about their sexual predisposition or prior sexual behavior that would not be permitted or admissible in a court of law. While a postsecondary disciplinary proceeding is not a court of law, the protections afforded to victims should be greater, not worse, in this context. However, to address this concern, the Sponsor amended HB 290 to include a provision which requires the institution to adopt standards of admissibility that are CONSISTENT with KRE 412, Kentucky's rape shield provision, and Title IX.	X
Replace the right to cross-examine testimony with the right to question testimony. The institutions' rationale is that the term "cross-examine" is too litigious. There was also a concern, shared by victim's rights groups, that the language may conflict with Title IX>	**Proposed change was not incorporated as requested**-The sponsor maintains that questioning and cross-examination are not synonymous. Cross-examination preserves the ability of an individual to be responsive to testimony as it is offered. Questioning does not necessarily carry the same connotation. Therefore, replacing the term "cross-examination" with "questioning" could have the consequence of limiting the ability of a participant to confront testimony offered at a hearing. Therefore, the institutions' proposal to replace the right to cross-examine hearing testimony with the right to question hearing testimony has not been incorporated in the current version of HB 290. Page 5, line 24. However, this language has been amended to be more consistent with Title IX. Page 6, line 9.	X
Limit the right to question/cross-examine to only apply to the testimony of a *participant.*	**Proposed change was not incorporated**- The definition of participants only includes complainants (victims) and respondents. It would not include non-victim witnesses that file a formal complaint. Nor would it include faculty or staff that offer testimony against a respondent. The testimony at a hearing is not restricted to participants. Therefore, restricting the right to question to only apply to the testimony of a participant would likely violate the confrontation clause of the United States and Kentucky Constitutions. The sponsor strongly believes that the right to confront testimony is a critical tenant of due process and should be incorporated into the procedural protections afforded under HB 290. . For this reason, the institutions' proposal to limit the right to question to only apply to the testimony of a participant has not been included.	X
Limit the right to question/cross-examine to only be afforded to a *respondent* instead of a respondent and a complainant.	**Proposed change was not incorporated**-The sponsor's rationale for preserving victim's rights is outlined thoroughly in previous sections. For these same reasons, the current version of HB 290 does not include the institutions' proposal to limit the right to question (cross-examine) to only apply to a respondent, thus excluding a complainant (victim.) Page 5, lines 9 and 11.	X

Empower the governing board of an institution to delegate certain authority to the administration in addition. The institutions' rationale is that existing law permits this authority to be delegated to the faculty. This change would expand the authority to assist institutions in maintaining efficiency and consistency in the disciplinary process.	**Proposed change was incorporated as requested**: The current version of HB 290 empowers a governing board of an institution to delegate certain authority to the administration in addition to the faculty. Page 5, line 19.	✓
Permit the governing board to delegate the authority to directly expel/suspend a student rather than *recommend* suspension or expulsion.	**Proposed change was incorporated as requested**: The current version of HB 290 empowers a governing board of an institution to delegate the authority to directly expel/suspend a student rather than just recommend suspension or expulsion. Page 5, line 20.	✓
Remove the right to appeal afforded to a participant if a violation results in termination of the respondent's residence in campus housing. The institutions' rationales are enumerated in in the housing section above.	**Proposed change was not incorporated but the concern was reflected in other changes-** The sponsor strongly believe that a student's interest in stable housing triggers a heightened standard of procedural protections that would necessitate preserving the student's right to appeal. The applicability of this protection has been specifically limited to only apply if the termination of campus housing arises from a violation of the student code of conduct. The bill specifically excludes termination of housing pursuant to a judicial order (i.e. a restraining order) or breach of housing contract. The sponsor believes this adequately preserves the interests of the institutions as enumerated above without jeopardizing the student's ability to appeal a termination in student housing arising from a violation of the code for student conduct.	✓/ X
Remove the right to appeal afforded to a student organization whose affiliation with the institution is terminated arising from a violation.	**Proposed change was incorporated as requested**: Affiliation status of student organizations has been removed from the scope of the bill. Page 5, line 24.	✓
Permit the governing board to delegate initial administrative appeal.	**Proposed change was incorporated as requested**: The current version of HB 290 empowers a governing board of an institution to delegate the authority to hear an initial appeal. Page 6, line 1.	✓

Strike the language permitting a respondent to appeal the final order of a governing board in accordance with 13B. The institutions rationale was that 13B specifically excludes this type of proceeding. Further, that the costs of defending an appeal would inflate the costs of education.	**Proposed change was not incorporated -** The current version of HB 290 does not eliminate the appellate rights of respondents as proposed by the institutions. The sponsor believes that access to an impartial appeal is critical to preserving integrity of the procedural protections afforded by the bill. The power imbalance between the institution and the student is too great to permit the institution's costs to be a barrier to a student's bona fide appeal. However, the sponsor has amended the current version to notwithstand KRS 13B.020(3)(i) to address the institution's concern that 13B would not apply.	
After the meeting, an institution proposed capping the amount an attorney may charge to represent a student in a student disciplinary matter to match the amount that an institution may pay hourly for outside counsel. The institution's representative maintained that this would place the institution and the student on equal ground when hiring an attorney. **Note, this change was requested by a single institution and was NOT included in the general institutional proposal submitted by the schools collectively.**	**Proposed change was not incorporated**- The Sponsor did not accommodate that change either, as it completely ignores the power dynamics between the institution and the student and the extreme advantages an institution has in hiring counsel over a student. For example, the institution's ability to leverage an on-going relationship with outside counsel and the goodwill of a public association with the institution to secure lower rates of pay. Comparing the bargaining position of a student with the bargaining position of a student is not logical or fair to students involved in these matters. Moreover, the institutions invest PUBLIC funds when hiring an attorney, therefore, the public has an interest in the rates that an institution would pay for that representation. The bill clearly establishes that a participant must hire an attorney at their own expense. Therefore, no public funds are necessitated. The public has no interest in restricting the use of private funds and therefore it can be argued that the General Assembly has no right to impose such a restriction.	
Not proposed by institutions	**Change not proposed by institutions.** There were concerns that Title IX complaints rights needed to be clearly established in the bill, an issue that became more of an issue with the amended definition of complainant. Therefore, language was added to clarify that, as required by federal law, a Title IX complainant has the same rights to appeal as afforded to the respondent.	
Strike the minimum amount of damages recoverable upon appeal of a final order of a governing board in accordance with 13B.	**Proposed change was incorporated –**The current version of HB 290 strikes the minimum damages included in previous versions. Instead, the bill limits recovery to "actual damages." This requires a participant to prove all damages.	X

Strike the ability of a participant that has a final overturned upon appeal to recover attorney fees.	**Proposed change was not incorporated as requested-** The bill has been amended to specify that attorney fees must be reasonable to be recovered. This change is consistent with other statutes permitting the recovery of attorney fees. Given the extreme power imbalance of an institution and a student, the sponsor does not want the costs of maintaining an appeal to become a barrier to a student pursuing a bona fide appeal. Moreover, an institution should not be insulated from responsibility arising from its failure to afford students the procedural protections set forth in the Act.	
Not proposed by the institution	**Change not proposed by institution:** A section on interim measures has been amended to provide procedural safeguards, including an interim measure hearing. This change was not proposed by the institutions.	
Preserve the ability of the institution to terminate a student's residence in campus housing pursuant to a breach of housing contract	**Proposed change was incorporated as requested**: The current version of HB 290 specifically preserves the ability of institution to terminate a student's residence in campus housing pursuant to a breach of housing contract, including but not limited to nonpayment.	✓
Preserve the ability of the institution to terminate a student's residence in campus housing pursuant to a judicial order, such as a restraining order.	**Proposed change was incorporated as requested**: The current version of HB 290 specifically preserves the ability of institution to terminate a student's residence in campus housing pursuant to a judicial order, such as a restraining order.	✓
Specify that nothing in the bill is intended to supersede federal law.	**Proposed change was not incorporated –**The sponsor believes that federal law does not universally preempt the provisions of HB 290 because the relevant federal laws do not "occupy the field" of the issues addressed therein. Rather, relevant federal law establishes the bare minimum of the institution's responsibilities during certain student disciplinary proceedings. There are several instances notated throughout the bill where Federal law requires more, in which case Title IX would preempt those provisions. In most other places, the bill establishes a higher standard in Kentucky and enhances the types of student disciplinary proceedings which are required to meet that higher standard. Moreover, if the federal department of education determines, after passage of HB 290, that relevant federal rules "occupy the field" contrary to any provision contained herein, the proposed language is unnecessary as the Federal law would preempt HB 290 as a matter of law. Therefore, it is the sponsor's position that the language proposed by the institution is unnecessary and could create the false impression that if a federal provision that creates a lower minimum procedural protections than is established in HB 290, the Federal law would prevail. That is not the case.	X

Remove the annual reporting requirement that would require the institution to provide designated data on its handling of student disciplinary proceedings, including demographic data such as the race, gender, etc. The rationale offered by the institutions was that the smaller institutions would not be able to adequately de-identify the data to conform to federal law.	**Proposed change was not incorporated but the concern was reflected in other changes-** The current version HB 290 does not eliminate the reporting requirement, as proposed by the institutions. The sponsor believes that this report is necessary to provide insight as to the equitable handling of postsecondary disciplinary procedures to determine whether further intervention and legislation is necessary to preserve students' rights to due process and to be free from discrimination. However, the concern of the institutions with regard to de-identification of the data has been addressed in three ways. • First, the annual reporting requirement has been extended to once every FIVE years (UP FROM 3 IN HB 290 AS FILED), with the exception of the first report, in order to permit institutions to pool a greater number of cases. • Second, the current version of HB 290 includes a mechanism if information cannot be adequately de-identified. • Third, the current version of HB 290 specifically states that the report shall not provide any personally identifiable information. The sponsor believes that these provisions adequately address the institution's concerns with regard to compliance with federal law while preserving the public and IJCE's ability to assess the equity in an intuitions' handling of the student disciplinary process.	✓/ X
In a previous draft of HB 290, the mechanism for requesting an exemption from reporting a line item of data required for the report on student discipline required the institutions to request that exemption from CPE. An institution requested that this be changed to the Attorney General, to provide the institutions more legal protection if a request is not granted.	**Proposed change was incorporated as requested**: The sponsor agrees that the legal expertise of the Attorney General would be beneficial in determining whether disclosure of a data point would violate federal law. Therefore, the Sponsor agrees that the Attorney General would be a better recipient of a request for exemption. Therefore, this change was incorporated as requested.	

In response to a change that added a mechanism for requesting an exemption from reporting a line item of data required for the report on student discipline, an institution requested that the Sponsor extend the deadline for requesting an exemption and the deadline for filing a report.	**HCS CHANGE: The Sponsor made this change as requested by the institutions.**	