

(Draft – Awaiting Formal Approval)  
**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Tuesday, May 10, 2016 – 9:00 a.m. – Room 445 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. J. Stuart Adams  
Sen. Jim Dabakis  
Sen. Gene Davis  
Sen. Mark B. Madsen  
Rep. LaVar Christensen

Rep. Mark A. Wheatley  
Rep. Carol Spackman Moss  
Rep. R. Curt Webb

**Staff Present:**

Mr. Arthur L. Hunsaker, Policy Analyst  
Ms. Christine R. Gilbert, Associate General Counsel  
Ms. Tracey Fredman, Legislative Assistant

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Oda called the meeting to order at 9:14 a.m.

**MOTION:** Sen. Davis moved to approve the minutes of the April 21, 2016, meeting. The motion passed unanimously. Sen. Madsen was absent for the vote.

**2. H.B. 337, Student Right to Active Counsel, 2016 General Session**

Rep. Kim Coleman briefed committee members on the issues addressed in 2016 General Session H.B. 337, "Student Right to Active Counsel," including a provision that would require an institution of higher education to allow legal representation for a student during a disciplinary proceeding. Rep. Coleman also responded to some concerns raised by opponents to the legislation.

Committee staff distributed "Section 63G-3-201 When rulemaking is required" and "Section 63G-4-102 Scope and applicability of chapter."

Mr. David L. Buhler, Commissioner of Higher Education, cited Utah Code Sections 53B-3-103 "Power of board to adopt rules and enact regulations" and 53B-2-106 "Duties and responsibilities of the president of each institution – Approval by board of trustees" to demonstrate the statutory authority given to the Utah System of Higher Education to enact policies related to student conduct. Mr. Buhler noted that all institutions of higher education have long-standing policies that provide for hearings for the purpose of providing due process to students when needed. He also discussed a new policy, which is currently being drafted to address student hearings and active counsel or other student advocates. The draft policy will address the issues raised by Rep. Coleman and be reviewed by the Board of Regents in July.

Mr. Geoffrey T. Landward, Assistant Commissioner of Higher Education, explained the obligation of each institution to provide a safe learning environment for all students. He explained that when a student engages in unsafe conduct the school must take action.

Committee discussion followed during which Mr. Buhler indicated that he would send the new policy to committee staff after it is adopted by the board.

**3. Administrative Rules and Statutes Related to Crime Victim Reparations and Restitution**

Rep. Oda explained that restitution is an amount ordered by a court to be paid to a victim of a crime, and reparations is money paid to a victim by the state on certain types of damages.

Committee staff distributed "Statutes, Administrative Rules, and Court Rules Related to Reparation and Restitution" and "Table of Contents to Statutes, Administrative Rules, and Court Rules Related to Reparation and Restitution."

Mr. Gary Scheller, Director, Utah Office for Victims of Crime, briefed the committee on the reparation programs set up through his office to cover reasonable and necessary expenses a crime victim would otherwise have to pay for himself, such as short-term lost wages, psychological counseling, or medical expenses for victims not covered by insurance. Mr. Scheller explained that if a case is going to be prosecuted, the office would inform the prosecution of an open claim and any assistance given to the victim in the hope that the prosecutor would seek a restitution order from the court to repay the office. He noted that there are not a lot of restitution orders made in Utah and that the funds do not come from taxpayer dollars.

Committee staff distributed "Utah Office for Victims of Crime Annual Report, 2015."

Ms. Lana Taylor, Assistant Attorney General, Utah Office of Victims of Crime, clarified that although the office does offer opportunities for reparations for victims of violent crime, there are also some situations where a victim may seek restitution through the court process from the defendant directly. She said that the court determines complete restitution at the time of sentencing.

Mr. Rick Schwermer, Assistant State Court Administrator, reported that Utah has strong victim rights and restitution statutes in place and that restitution is more of a statutory issue than an administrative rule issue. Mr. Schwermer clarified that restitution is the responsibility of the prosecutor, who communicates directly with victims providing them notice of hearings, advocating for them in court, and informing them of the decisions of the court.

Committee discussion followed.

Sen. Madsen expressed concern about accountability of prosecutors in the restitution process. He also asked about misplaced assets following a civil asset forfeiture procedure.

Chair Oda said that staff would draft a letter requesting information to answer to Sen. Madsen's questions related to civil asset forfeiture.

Mr. Mike Hadden, Deputy Director, Utah Department of Corrections, indicated that the department does not have administrative rules on restitution issues beyond waiving of fines in preference of collecting restitution, and the collection of restitution from adults on probation.

#### **4. Committee Business**

The next meeting was tentatively scheduled for Monday, June 6, 2016.

#### **5. Adjournment**

**MOTION:** Rep. Webb moved to adjourn the meeting. The motion passed unanimously. Sen. Adams, Sen. Dabakis, and Sen. Davis were absent for the vote.

Chair Oda adjourned the meeting at 12:00 p.m.