

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 945

(Senator Pinsky)

Education, Health, and Environmental Affairs

Ways and Means and Appropriations

Higher Education - Maryland Longitudinal Data System - Governing Board and Data Transfers

This bill requires private nonprofit institutions of higher education that receive State funds to transfer student-level enrollment data, degree data, financial aid data, and credit data for *all students* to the Maryland Longitudinal Data System (MLDS) in accordance with the data security and safeguarding plan. The bill also establishes that for-profit and private nonprofit institutions, including the Maryland Independent College and University Association (MICUA), are not liable for a breach of confidentiality or for a disclosure, use, retention, or destruction of student-level data transferred in accordance with the data security and safeguarding plan to MLDS that results from an act or omission by the MLDS Center, a State agency, or a person provided access by the center or a State agency. The bill also adds the President of MICUA, or the President's designee, to the governing board of the center.

Fiscal Summary

State Effect: None. Any increase in travel reimbursement expenditures can be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: In general, the Eleventh Amendment to the U.S. Constitution prohibits private lawsuits against a state in the federal courts without the state consenting to be

sued. Moreover, recent decisions by the U.S. Supreme Court have established that, under the acts to which this bill relates, a state is immune from civil suit in state court unless the state has clearly waived immunity under the Eleventh Amendment by statute. However, this immunity does not transfer to private institutions that submit data to the State.

For-profit and private institutions of higher education and institutions of postsecondary education that are required to register due to offering fully online distance education courses to Maryland students must transfer student-level enrollment data, degree data, and financial aid data for *all Maryland residents* to MLDS in accordance with the required data security and safeguarding plan.

The governing board of the center includes the following State officials or their designee: the Secretary of Higher Education; the Chancellor of the University System of Maryland; the President of Morgan State University; the State Superintendent of Schools; and the Secretary of Labor, Licensing, and Regulation. A representative of local superintendents of schools, a representative of community colleges, and four members of the public – one with expertise in large data systems – are appointed by the Governor with the advice and consent of the Senate. Members appointed by the Governor serve three-year terms and may be reappointed but may not serve more than two consecutive terms. The Governor must appoint a chair of the governing board from among its members.

Governing board members may not receive compensation, but they are entitled to reimbursement for travel expenses.

Background: Chapter 190 of 2010 (SB 275) established MLDS to contain individual-level student data and workforce data from all levels of education and the State's workforce. The legislation also established the MLDS Center within State government to serve as a central repository for the data, to ensure compliance with federal privacy laws, to perform research on the data sets, and to fulfill education reporting requirements and approved public information requests.

Privacy issues, including federal Family Educational Rights and Privacy Act (FERPA) compliance, were a major consideration in the creation of MLDS. Prior to beginning system testing, as required by Chapter 190, the center's governing board submitted to the Governor and the General Assembly the inventory of individual student data proposed to be maintained in the system, the privacy policies of the center, and a data security and safeguarding plan for the center. Chapter 190 requires the center to ensure routine and ongoing compliance with FERPA and other relevant privacy laws and policies, including the required use of de-identified data (in which individual-level identity information, including State-assigned student identifiers and Social Security numbers has been removed) in data research and reporting, the required disposition of information that is no longer needed, and the reporting of other potentially identifying data. The center is also

required to provide for the performance of regular audits for compliance with data privacy and security standards.

To meet these requirements, an expert was hired to develop the center's data security and safeguarding plan. The plan establishes that the center must employ the concept of least privilege, that is, allowing only authorized accesses for users (and processes acting on behalf of users) that are necessary to accomplish assigned tasks in accordance with the MLDS mission and functions. The plan also outlines policies to limit access to authenticated authorized users, and it requires the center to assign an employee as the privacy officer.

To further reduce privacy concerns and in response to the technical issues experienced by other states that attempted to capture all state data into a single system, the scope of the data in the MLDS data warehouse is limited by the policy questions it is designed to answer. The governing board, working in consultation with the Governor's P-20 Council, has developed 15 priority policy questions that MLDS has been designed to address. These policy questions include whether Maryland students are academically prepared for college and graduate in a timely fashion, whether financial aid programs are effective in supporting access and success, and whether students are successful in the workplace. Some of the questions will require the State agencies, particularly the Maryland Higher Education Commission, to expand their data collection efforts. The MLDS data inventory documents the specific data elements included in MLDS. The scope of the data incorporated into MLDS is not permanent and could be updated if new policy questions are added.

Currently, the database contains both aggregate data sets and de-identified, encrypted student and workforce data. Data associated with an individual is not available for viewing in the MLDS database, and workforce-related data is only retained for five years after an individual leaves school.

FERPA compliance concerns of institutions of higher education have been addressed through limiting the personally identifiable information entered into MLDS and by assuring the institutions that the redisclosure of personally identifiable information to the center is permitted according to revised federal FERPA regulations. FERPA governs the protection and permissible uses of student administrative data, including the disclosure and transfer of personally identifiable information in education records. The federal FERPA regulations were revised in December 2011 to reconcile them with the federal laws (*e.g.*, Race to the Top) that provided incentives for the development and use of state longitudinal data systems. The revised regulations clarified that FERPA does not prevent the redisclosure of personally identifiable information as part of agreements from FERPA-permitted entities to researchers to conduct studies for, and on behalf of, educational agencies and institutions.

The State provides funding for eligible independent (private, nonprofit) institutions through the Joseph A. Sellinger Funding Formula. The per student general fund support at certain public four-year institutions is multiplied by a percentage set in statute to determine Sellinger aid. This amount is then multiplied by eligible independent college and university enrollments. Sellinger aid grows to \$41.3 million in the Governor's proposed fiscal 2014 budget for fifteen institutions. MICUA represents 14 of the 15 institutions receiving Sellinger aid. MICUA has set a goal for member institutions to use at least 70% of Sellinger funding for need-based financial aid for Maryland residents. In fiscal 2012, 86% of funding was used this way. The remainder allows some flexibility for private institutions to meet other State priorities, such as teacher education; nursing; science, technology, engineering, and mathematics (better known as STEM); and diversity goals.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Legislative Services

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