

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1027 (Senator Madaleno, *et al.*)
Education, Health, and Environmental Affairs

Higher Education - Transfer Student Education Records - Requirements

This bill requires an institution of higher education, within 30 days after *accepting* a transfer student, to request and *obtain* the education records of the student regarding any disciplinary actions taken against the student by any institution in which the student was previously enrolled. If a student's education record indicates that the student was disciplined for a violation of a sexual assault policy adopted under State law, the institution must impose individualized conditions on the attendance and enrollment of the student in order to prevent the student from violating the institution's sexual assault policy. An institution of higher education must provide notice to all students that the institution provides education records regarding disciplinary action to other specified institutions. The notice must comply with any applicable federal law or regulation. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: In general, public institutions of higher education can request and obtain the required disciplinary actions and implement the individualized conditions using existing resources. However, the institutions may not be able to *obtain* the required records for some students as explained below.

Local Effect: In general, local community colleges can request and obtain the required disciplinary actions and implement the individualized conditions using existing resources. However, the institutions may not be able to *obtain* the required records for some students as explained below.

Small Business Effect: None.

Analysis

Current Law:

Sexual Assault Policies

Since 1993, all institutions of higher education in the State, including local community colleges and public and private four-year institutions, have been required to have sexual assault policies. Chapter 436 of 2015 specifically requires the sexual assault policies of higher education institutions in the State to comply with Title IX of the Education Amendments of 1972 and to include additional specified procedures and provisions.

Family Educational Rights and Privacy Act Regulations (FERPA)

In general, an institution can disclose information about a transfer student to an institution where the student seeks or intends to enroll, including disciplinary proceedings. However, institutions are required to inform students of such disclosures, either in their annual notice of FERPA rights or by directly contacting the student. FERPA also permits receiving institutions to screen for and, if necessary, request disciplinary records during the application process.

Background: In recent years, a number of high-profile incidents of sexual violence at institutions of higher education have heightened scrutiny of the policies and procedures that institutions use to address sexual violence on campus. One concern has been that an individual accused of sexual misconduct on one campus can withdraw and enroll in another institution. The offense may not necessarily appear on a student's transcript, especially if the student withdrew prior to the conclusion of disciplinary investigations. Further, institutions that accept transfer students are not required to check for disciplinary action when admitting a student. Even if an institutions asks for information, full disclosure on disciplinary actions is not required. Further, there is no standard method to record disciplinary actions nor are institutions required to keep specific disciplinary records.

The Maryland Higher Education Commission advises it only keeps academic records, not disciplinary records, for closed schools.

St. Mary's College of Maryland advises that its current practice is to require a student's registrar/school report from all new transfer students prior to *enrollment*. Those reports detail whether the student is in good academic standing and whether the student has any disciplinary actions pending.

State/Local Fiscal Effect: Institutions may request the required education records from another institution, but that institution is not compelled to share the records, particularly

out-of-state institutions. The bill specifies that an institution must *obtain* the required records within 30 days of accepting a transfer student, but it does not prohibit a transfer student from enrolling without the records. Thus, it is assumed that a transfer student will be allowed to enroll even if the institution was unable to obtain the required records.

However, to the extent that students are prohibited from enrolling without the required records, particular students may not be able to enroll despite being accepted to an institution because the institution did not *obtain* the required records. This may affect higher education tuition and other revenues. Since most four-year institutions are not open enrollment, they can generally control their enrollment and may admit other students, so it is assumed that revenues are not affected. Open enrollment institutions, including community colleges, may enroll fewer students due to the bill, which may affect higher education revenues by an indeterminate amount.

Additional Comments: The bill does not address how a student may enroll in an institution if his or her disciplinary record is not available for legal or other reasons. Other states and other countries may have conflicting laws regarding the disclosure of disciplinary records. In addition, disciplinary records for closed institutions likely do not exist. Thus, institutions may not be able to obtain the disciplinary records for some students. Further, institutions in other jurisdictions will not have a sexual assault policy adopted under the Maryland law.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 713 (Delegate Morales, *et al.* – Appropriations) is not identical.

Information Source(s): Maryland Higher Education Commission; Baltimore City Community College; Morgan State University; St. Mary's College of Maryland; Maryland Independent College and University Association; American Association of Collegiate Registrars and Admissions Officers; U.S. Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2018
mag/rhh

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