

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1033 (Senator Hough, *et al.*)
Education, Health, and Environmental Affairs

Public Senior Higher Education Institutions - Disciplinary Proceedings -
Students and Student Organizations

This bill establishes the right to an attorney or nonattorney advocate for a student or an officially recognized student organization during specified disciplinary proceedings at public four-year institutions of higher education. The bill does not apply to matters involving academic misconduct or any matter that may not result in specified punishments. The bill also establishes the right of a student or student organization to appeal an initial decision under certain circumstances, and it establishes procedures for an appeal. If any of the rights of a student or student organization are violated under the bill, a court of competent jurisdiction *must* award a student or student organization damages, injunctive relief, court costs, or attorney's fees against a public four-year institution. A student or student organization initiating a lawsuit based on a violation of the laws established by the bill must file an action within one year after the alleged violation.

Fiscal Summary

State Effect: Public four-year institutions of higher education can meet the requirements of the bill using existing resources. Assuming compliance by the institutions, the bill does not materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect circuit court operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The attorney or nonattorney advocate must represent the student or student organization at the student's or student organization's expense – if the student or organization chooses to be represented – and may fully participate during any disciplinary proceeding or other specified procedures. The bill also prohibits specified conflicts of interest, and it requires specified procedures regarding evidence. Further, the bill requires an institution to inform any student or student organization in writing of their rights under the bill before a disciplinary proceeding or other procedure is scheduled.

A student or student organization that is suspended, removed, or expelled from a public four-year higher education institution for a violation of the rules or policies of that institution must have the right to appeal the institution's initial decision. If the appeal results in the reversal of the decision or a lessening of the sanction, the public four-year higher education institution *may* reimburse the student for any tuition or fees paid to the institution by the student or student organization during the period of suspension, removal, or expulsion that have not been previously refunded.

The Maryland Higher Education Commission (MHEC) must adopt regulations for disciplinary procedures that affect all public four-year higher education institutions in accordance with the bill.

Current Law/Background:

Student Disciplinary Procedures

By statute, students and student organizations are not granted the right to an attorney or a nonattorney advocate during a disciplinary proceeding or other procedure designed to address a violation of an institution's rules, nor does a student or student organization have the right to an appeal. Public four-year institutions set their own disciplinary hearing rules. Institutions also establish which types of behavioral misconduct are subject to suspension, expulsion, or removal of a student or student organization. Behavioral misconduct may include violations of alcohol or drug policies.

A sampling of the student disciplinary hearing rules from public four-year institutions regarding attorney and nonattorney advocates follows.

At the University of Maryland, College Park Campus a student may be assisted by a representative, who may be an attorney. Representatives are allowed to address the board, in accordance with the hearing guidelines. A student must inform the Office of Student Conduct, in writing, at least five business days prior a scheduled hearing. At Morgan State University, an advisor may attend a student's disciplinary hearing. The advisor may not

speak or present the student's case but may provide the student with advice during the course of the proceeding.

At St. Mary's College of Maryland, a student may be assisted by an advisor of his or her choice to provide support through the conduct process, subject to specified limitations. An advisor may not be a witness or other party to the proceeding. Complainants and respondents who wish to consult with an attorney may do so at their own expense. An advisor has no speaking role in the hearing and is not permitted to ask or answer questions or address the hearing board. An advisor may only provide advice to the complainant or respondent in a nondisruptive manner (such as communicating in writing). Any case must be presented by the student.

Tort Claims Act

Although the State, including public four-year institutions, generally has "sovereign immunity" – that immunity is largely waived under the Maryland Tort Claims Act (MTCA). An individual who wishes to sue a State entity must comply with certain procedural requirements, and recovery is capped at \$400,000. State law governing the public four-year institutions specifically waives the institutions' immunity only to the extent the claim is covered by any applicable liability insurance purchased by the institution or the State Treasurer. An action under MTCA can be filed in the District Court or a circuit court.

State Fiscal Effect: Public four-year institutions of higher education may need to make changes to their disciplinary hearing rules and procedures. The Department of Legislative Services advises that the institutions can make any needed changes using existing resources. MHEC can adopt the required regulations using existing resources.

However, if a student or student organization files a lawsuit and a public four-year institution of higher education is found to have violated their rights as established by the bill, a court *must* award damages, injunctive relief, court costs, or attorney's fees against the institution. Violation of the specified rights is anticipated to occur rarely. Thus, while any violation may result in significant higher education expenditures, any expenditures are anticipated to occur rarely. To the extent they do occur, costs are capped at \$400,000 per case and may be less to the extent the claim is covered by the institution's liability insurance. Some claims may be filed in District Court, but any impact on the court's operations is assumed to be minimal and absorbable within existing resources.

Further, the bill specifies that, if an appeal results in the reversal of the decision or a lessening of a sanction, a public four-year institution *may* reimburse a student for any tuition or fees paid to the institution by the student or student organization during the period of suspension, removal, or expulsion that have not been previously refunded; thus, public

four-year institutions *may* refund some tuition and fee revenue. It is unknown to what extent an institution may have refunded tuition or fee revenue absent this bill. The amount of tuition or fee revenue that may be refunded is at the discretion of each institution and depends on the specific disciplinary hearings held each year, which cannot be reliably estimated.

Local Fiscal Effect: The bill could result in more petitions filed in circuit court. However, it is anticipated that any increases will be minimal and can be handled with existing resources.

Additional Information

Prior Introductions: A similar bill, HB 1142 of 2017, received a hearing in the House Appropriations Committee, but no further action was taken.

Cross File: HB 603 (Delegate Hornberger, *et al.*) - Appropriations.

Information Source(s): Maryland Higher Education Commission; Morgan State University; St. Mary's College of Maryland; Department of Legislative Services

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