

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 887
(Senator Lee)
Education, Health, and Environmental Affairs

**Primary and Secondary Education - Title IX - Policies and Procedures (Hear
Our Voices Act of 2022)**

This bill requires, by March 31, 2023, the State Board of Education (SBE), after consultation with local school systems, to develop policies and procedures for reporting, administering, investigating, and resolving complaints related to incidents of sexual misconduct and Title IX of the Education Amendments of 1972. The Maryland State Department of Education (MSDE) must develop a database for administrators to upload sexual misconduct complaints. A public school must (1) notify the parent or guardian of a student who files a complaint; (2) collect data on sexual misconduct complaints and report the data to MSDE; and (3) inform students, faculty, and staff regarding who serves as the Title IX coordinator for the school and how to file a sexual misconduct complaint. A person may bring a civil action against a local school system that fails to comply with policies and procedures developed due to the bill and recover damages, reasonable costs, and attorney's fees. SBE must adopt regulations to implement the bill. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: MSDE can develop the required database and regulations using existing resources. It is assumed that the Judiciary makes one-time program changes to the Judicial Information System using existing resources. It is assumed any increase in District Court proceedings as a result of the bill can be handled with existing resources. Revenues are not affected.

Local Effect: Local school systems can notify the parent or guardian of a student who files a complaint related to sexual misconduct and collect the required data and report the data to MSDE annually using existing resources. Local school system legal expenditures may increase; however, it is assumed that overall, the fiscal effect can be absorbed within existing budgeted resources. It is assumed any increase in circuit court proceedings as a result of the bill can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law:

Title IX

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. As entities that provide education and receive federal funds, local school systems must follow Title IX requirements. Some key issue areas in which federal fund recipients have Title IX obligations are recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment. The U.S. Department of Education's (ED) Office for Civil Rights (OCR) enforces Title IX for recipients that receive funds from ED.

Title IX Regulations

ED has announced its intention to release proposed amendments to Title IX's implementing regulations by April 2022. According to a statement, the new regulations will address (1) ensuring that schools are providing students with educational environments free from discrimination in the form of sexual harassment; (2) ensuring that schools have grievance procedures that provide for fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination; and (3) addressing discrimination based on sex, including sexual orientation and gender identity, in educational environments.

These proposed regulations are intended to replace regulations that were proposed in November 2018 and became effective on August 14, 2020. Under the current federal regulations, legal experts report, a school system may dismiss sexual harassment, abuse, or assault complaints if the alleged perpetrator quits before or during an investigation, thus, allowing an alleged sex offender to move to another district without a paper trail. However, when the regulations were introduced, ED advised it would enforce the provisions on prohibition on aiding and abetting sexual abuse in the 2015 federal Every Student Succeeds Act, which prevent assisting an individual in obtaining a new job, apart from the routine transmission of files, if the local school system knows or has probable cause to believe that the individual engaged in sexual misconduct regarding a minor or student. The current regulations also made other changes to the process, including increasing reporting requirements and changing the hearing process. Live hearings between student victims and the accused are optional under the current regulations.

Title IX Coordinator

Under Title IX, each recipient must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed. Further, a recipient must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part.

In an April 25, 2015 “Dear Colleague” letter, ED stated that the Title IX coordinator’s primary responsibility is to coordinate the recipient’s compliance with Title IX, including the recipient’s grievance procedures for resolving Title IX complaints. The Title IX coordinator is responsible for coordinating the recipient’s responses to all complaints involving possible sex discrimination. Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints. The Title IX coordinator could play this role, provided there are no conflicts of interest, but does not have to.

Office of Civil Rights – Title IX (and Other) Complaints

Any individual who believes that an education institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age may file a complaint with the OCR. The person or organization filing the complaint does not have to be a victim of the alleged discrimination. A complaint must be filed within 180 days of the alleged discrimination. OCR does not handle cases that are being addressed by another agency or within a school’s formal grievance procedure if OCR anticipates the agency or school will provide a comparable resolution process. Once that complaint process is complete, an individual has 60 days to file a complaint with OCR. OCR’s first step will be to determine whether to defer to the result reached in the other process.

An OCR discrimination complaint may be filed by contacting the local OCR enforcement office to obtain a form, or the [online complaint form](#) may be used. In addition, an individual may write an email or a letter explaining the complaint to the OCR enforcement office.

Selected Definitions

“Child sexual abuse,” as defined in § 6-113.1 of the Education Article, means an act involving a minor or student by an adult that constitutes a sexual offense under the laws of the State or any sexual contact between an adult and a minor.

“Direct contact with minors” as defined in § 6-113.2 means the possibility of care, supervision, guidance, or control of a minor or routine interaction with a minor.

“Sexual misconduct,” as defined in § 6-113.1 of the Education Article, is an act by an adult, including oral, nonverbal, written, or electronic communication, or a physical activity directed toward or with a minor that is designed to promote a romantic or sexual relationship with the minor, including (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) grooming behaviors; (6) self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and (7) a sexual, indecent, romantic, or erotic contact with the minor.

Annual Training

A local board of education or nonpublic school that receives State funds must require each employee to receive instruction annually on the prevention, identification, and reporting of child sexual abuse. The instruction must include comprehensive training and information to help employees as specified, including recognizing sexual misconduct in adults and recognizing and appropriately responding to sexual inappropriate, coercive, or abusive behaviors among minors.

Further, each local board of education must establish and implement policies that support the prevention of child sexual abuse through ongoing training of staff regarding specified topics.

Mandatory Reporters

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” means any professional employee of any correctional, public, parochial, or private educational, health, juvenile service, social or social service agency, institution, or licensed facility. Such workers include any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee. A “health practitioner” does not include an emergency medical dispatcher.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to

abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State's Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child's parent or other person responsible for the child's care; the whereabouts of the child; and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, any information that would help to determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Such notification may be oral or in writing and must, to the extent possible, include the same information as specified above. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute.

Individuals who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

State law does not criminalize the failure of a worker to report suspected abuse or neglect. The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report. Pursuant to Chapters 374 and 375 of 2016, if an agency is participating in a child abuse or neglect investigation and has substantial grounds to believe that a worker has knowingly failed to make a required report of suspected abuse or neglect, it must file a complaint with the worker's licensing board, law enforcement agency, county board of education, or other agency, institution, or licensed facility, as appropriate, at which the worker is employed.

Additional Information

Prior Introductions: HB 1536 of 2020 received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: HB 472 (Delegate J. Lewis, *et al.*) - Ways and Means.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Public Schools; Anne Arundel County Public Schools; Prince George's County Public Schools; Department of Legislative Services

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