

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 16

(Delegate J. Lewis)

Ways and Means

Education, Energy, and the Environment

Primary and Secondary Education – Title IX – Notice (Hear Our Voices Act)

This bill requires each public school to inform students, faculty, staff, and parents regarding (1) who serves as the Title IX coordinator for the school; (2) the process in place for filing a sexual misconduct complaint; and (3) the support measures that are in place for an individual who files a sexual misconduct complaint and how to access the support measures. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: None.

Local Effect: Local school systems can inform students, faculty, staff, and parents about specified information using existing resources. It is assumed that the number of sexual misconduct complaints are not materially impacted; thus, related expenditures are not materially impacted. Revenues are not affected.

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 with 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

In June 2022, ED released for public comment proposed amendments to Title IX's implementing regulations. These proposed regulations are intended to replace regulations that were proposed in November 2018 and became effective on August 14, 2020. The public had 60 days to submit comments to ED regarding the proposed regulations following their publication in the federal register. ED must summarize and respond to the comments received and issue the resulting final regulations, which will include an effective date. Until the final regulations are issued, which may be months, the 2020 regulations remain in effect.

According to ED, in part, the proposed regulations (1) clearly protect students and employees from all forms of sex discrimination including discrimination based on sexual orientation and gender identity; (2) restore full protection from sex-based harassment; (3) require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects; (4) require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decision makers to evaluate all permissible evidence; (5) require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment; and (6) ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.

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, including any investigation of any complaint alleging its noncompliance or alleging any prohibited actions. 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 under Title IX.

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 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. In accordance with 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: Similar legislation has been introduced within the last three years. See SB 887 and HB 472 of 2022 and HB 1536 of 2020.

Designated Cross File: None.

Information Source(s): Maryland School for the Deaf; Baltimore County Public Schools; Anne Arundel County Public Schools; Montgomery County Public Schools; Frederick County Public Schools; Department of Legislative Services

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