

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 61 (Senator A. Washington)
Education, Energy, and the Environment

Higher Education - Disciplinary Records - Use in Admissions and Disciplinary Proceedings

This bill generally prohibits an institution of higher education that receives State funds from using an admissions application that contains questions about an applicant’s disciplinary record. However, such an institution may use a third-party admissions application that contains such questions if (1) that third-party admissions application is not used to disqualify an applicant based on the disciplinary record and (2) a notice is posted on the institution’s website stating that a disciplinary record does not disqualify an applicant from admission. Further, such an institution may make inquiries into and consider information about a student’s disciplinary record for discipline related to academic dishonesty. For purposes of the bill, “disciplinary record” is any information relating to the discipline of a student from a public or private primary or secondary school in any state. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Institutions of higher education can make changes to the admissions process using existing resources. Revenues are not affected.

Local Effect: Local community colleges can make changes to the admissions process using existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Institution of Higher Education

“Institution of higher education” is defined as an institution of postsecondary education that generally limits enrollment to graduates of secondary schools and awards degrees at either the associate, baccalaureate, or graduate level. It includes public, private nonprofit, and for-profit institutions.

Maryland Fair Access to Education Act of 2017

The Maryland Fair Access to Education Act of 2017 (Chapter 2 of 2018) generally prohibits an institution of higher education that receives State funds from using an undergraduate admissions application that contains questions about the criminal history of the applicant. However, an institution may use a third-party admissions application that contains questions about the criminal history of the applicant if the institution (1) does not use the third-party application to disqualify an applicant based on criminal history and (2) posts a notice on its website stating that a criminal history does not disqualify an applicant from admission. A student’s criminal history may be inquired into and considered for the purposes of deciding access to campus residency or offering counseling and services. An institution of higher education may develop a process for determining or restricting access to campus residency for a student who has been convicted of (1) a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; (2) a crime of violence under Title 14 of the Criminal Law Article; or (3) a substantially similar crime in another state. An institution of higher education must develop a process that considers specified issues in denying admission or limiting access to an affected student’s campus residency.

State law, however, allows various State licensure boards, including health occupations boards, to prohibit licensure to an individual who is convicted of or pleads guilty or *nolo contendere* to a felony or to a crime involving moral turpitude or other specified crimes.

Family Educational Rights and Privacy Act

At the federal level, the Family Educational Rights and Privacy Act (FERPA) of 1974 governs the privacy of student data. FERPA generally prohibits the disclosure by schools that receive federal education funding of personally identifiable information from a student’s education record unless the educational institution has obtained signed and dated written consent from a parent or eligible student or one of FERPA’s exceptions applies. An education record includes a range of information about a student.

FERPA's exceptions are not always well understood, which leads to some believing that no information about a student may be disclosed without facing a lawsuit, even in the face of health or safety concerns. However, federal regulations (34 CFR 99.36) specifically address these circumstances so that an institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

In addition, not all information that comes into the hands of an educator, administrator, or other school staff is an "education record" subject to FERPA restrictions. Two particular sources of information are outside FERPA's definition of "education record": (1) information an educator learns through personal observation, peer reports, or social media; and (2) records of school security personnel, which are governed under a specific exception to FERPA. Therefore, this information may be disclosed outside of FERPA.

Additional Comments: The University System of Maryland (USM) advises that some criminal and disciplinary records may prevent students from completing certain majors or programs. Various professions, such as teaching, law, and certified public accounting, have specific eligibility criteria related to criminal or disciplinary history. This is applicable to fields like social work, nursing, and others, with federal and State requirements adding complexity. USM advises institutions may need to implement measures such as having students acknowledge, through forms like technical standards, that they must be free of certain past experiences to be eligible for the major.

For example, according to [accreditation](#) standards set by the American Bar Association, institutions must only "admit applicants who appear capable of...being admitted to the bar." All state bars have character and fitness requirements that must be satisfied before a candidate to the bar may be admitted. The character and fitness requirements in most, if not all, states (including Maryland) ask for a candidate's criminal history and academic disciplinary history. Applicants to law school may not be eligible for admission to the state bar based on these histories. The law school must certify to the state bar that, to the best of its knowledge, each student completing the Juris Doctorate program is eligible to apply for bar entry. Failure to meet accreditation standards could result in a loss of accreditation.

Further, USM advises that, while campuses do not deny admission to students based solely on disciplinary records, aligning with the bill's goal of equitable treatment, there may be liability concerns. While statute permits inquiries into criminal records for campus-owned housing, there is no parallel provision in this bill for disciplinary records. Without the ability to make such inquiries, if an issue were to arise with a student holding a disciplinary record, campuses or the State could be held responsible for not addressing potential risks.

St. Mary's College of Maryland advises that its admissions policies are already compliant. Baltimore City Community College advises it will need to update its admissions policies and procedures.

For a similar prior introduction, the Maryland State Department of Education advised that a student's school disciplinary record is protected under FERPA and, thus, would not be disclosed by a local school system for the exception contained in the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 812 of 2023.

Designated Cross File: None.

Information Source(s): Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland State Department of Education; Department of Legislative Services

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