MICUA
MARYLAND INDEPENDENT COLLEGE and UNIVERSITY ASSOCIATION

Letter of Concern

Senate Education, Energy and Environment Committee
House Bill 649– (Chair – By Request – Departmental – Civil Rights Commission)
Advancing Educational Opportunities for All Students in Maryland

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On behalf of Maryland's 13 independent colleges and universities and the 56,000 students we serve, thank you for the opportunity to provide a letter of concern regarding *House Bill 649– (Chair – By Request – Departmental – Civil Rights Commission)*. The Maryland Independent College and University Association (MICUA), representing Maryland's nonprofit independent colleges and universities, appreciates the Maryland Commission on Civil Rights' focus on protecting students and its concern about the erosion of federal capacity at the U.S. Department of Education's Office for Civil Rights (OCR). Recent reductions and restructuring at OCR have raised serious questions about whether students can consistently receive timely, predictable enforcement of federal civil rights protections, and MICUA shares the Commission's goal of ensuring that students' rights are safeguarded even when federal enforcement is strained or shifting.

We share the Commission's concerns about OCR, but the proposal within HB 649 would not result in the Maryland Commission on Civil Rights becoming a state-level OCR type entity that secures reforms on behalf for all students. OCR is a compliance-enforcement office that investigates institutions, secures monitored resolution agreements, and drives institutional reform. HB 649 places the Commission in a mediation, adjudication, and litigation oriented role, with a private damages action that can terminate the administrative process that has historically allowed OCR to drive systemic protection for students' civil rights. The system created in HB 649 will primarily result in costly litigation for students and institutions without achieving the sustained structural reform into the future that OCR has historically created.

As introduced, HB 649 would apply to "educational institutions" defined broadly to include institutions of postsecondary education, institutions of higher education, and other programs leading to a credential or degree. The bill also expressly provides that the Commission on Civil Rights would be treated as a "State educational authority" under FERPA, and the new subtitle would be administered and enforced after the Commission adopts initial regulations, with enforcement occurring through both the Commission and the courts. On the higher education side, the bill further establishes a mandatory referral pipeline by requiring the Maryland Higher Education Commission, and separately the University System of Maryland Board of Regents, to

refer information about certain discrimination complaints to the Commission on Civil Rights for investigation.

Against that backdrop, HB 649 effectively adds a new State-level channel for students to pursue remedies in addition to the federal avenues already available. Under OCR's published process, students may file federal civil rights complaints directly with OCR and generally must do so within 180 days of the alleged discrimination, subject to limited waiver circumstances. The practical effect of layering a new State enforcement structure on top of OCR is not simply "one more place to file." It is the creation of two active regulatory regimes—each with its own procedures, standards, timelines, and remedies—operating over the same campus events, often involving the same witnesses and documents, and potentially moving on different timetables.

When institutions are simultaneously subject to multiple enforcement bodies in the same space, the real risk is not only duplicative effort but conflicting mandates. HB 649 does not include the kind of clear coordination or work-sharing structure that exists in other regulatory settings to prevent duplicative investigations, reconcile outcomes, or clarify which body will take the lead in particular categories of cases.

HB 649 also drastically changes the liability landscape. The bill provides that, beginning 30 days after the Commission adopts initial regulations, an individual alleging a discriminatory educational practice may bring a civil action. If a court finds a discriminatory educational practice occurred, the bill authorizes remedies that include injunctive relief, affirmative relief, compensatory damages, and punitive damages in cases against non-governmental defendants where the court finds "actual malice." For independent colleges and universities that are private, nonprofit entities, this is not theoretical exposure; it is a meaningful expansion of risk that will predictably affect institutional decision-making, insurance posture, and the cost of defending claims. It is difficult to overstate the downstream implications of creating a state cause of action that invites a new category of litigation and, with it, defense costs, deductibles, and premium pressure that ultimately reduce funds available for student services, student financial aid, and educational programming.

A worst-case institutional scenario under HB 649 is not simply "two investigations." It is a situation where the same incident triggers an OCR complaint and, separately, a State referral or complaint that initiates Commission involvement and immediate document and witness demands—only for the matter to shift into State-court litigation once a civil action is filed. That shift can occur because the complainant chooses to sue directly, or because the Commission later elects to sue after a probable cause finding and a failure to reach agreement. At that point, the Commission proceeding ends by operation of law, but the institution is still left defending a civil action while a federal OCR matter may continue on a separate track, resulting in costly, duplicative burdens and prolonged disruption for students and campuses. Even institutions that ultimately prevail as a result of no wrongdoing would incur substantial costs and operational strain simply navigating parallel tracks with different expectations.

Importantly, HB 649 also risks confusing students who are trying, often without counsel, to pursue a remedy. Students would be confronted with multiple pathways—internal campus processes, OCR, the State Commission process, and State litigation—each with its own deadlines, rules, and potential consequences. This is not a small problem. The 180-day OCR filing window is a concrete

example of how timing can matter. If a student assumes the new State system is the best first step, pursues it, and only later learns that a federal deadline has elapsed (or that waiver is uncertain), the student may have unintentionally forfeited a federal or administrative option that could have provided meaningful leverage or relief.

Another student-facing risk is embedded in the bill structure: HB 649 provides that filing a civil action "automatically terminates any proceeding before the Commission" based on the underlying complaint. Because the bill allows the complainant to file suit without Commission approval and also allows the Commission to elect to sue after a probable cause finding and a failure to reach agreement, neither students nor institutions can assume the administrative path will run to completion once litigation is initiated. In practice, that can steer students into an early litigation fork—especially in a climate where students may be told (or may believe) that suing is the fastest or strongest option. Once that choice is made, the student may lose an administrative path that could otherwise have resulted in quicker, less adversarial resolution. Litigation is slow, expensive, and emotionally taxing; it can easily delay practical accommodations or corrective actions that a student is seeking in real time. The very mechanism intended to expand options could pressure students into a pathway that reduces flexibility and prolongs harm.

MICUA recognizes the underlying motivation for HB 649, and we do not dismiss the Commission's concern that students should not be left in limbo when federal enforcement capacity is diminished or redirected. At the same time, the legal and operational complexities of installing a full state-level enforcement and litigation regime for higher education, on top of the federal regime, are simply too far-reaching as proposed. The bill's breadth, the absence of a formal coordination framework, the new and expanded litigation exposure (including punitive damages for non-governmental defendants), the automatic termination of Commission proceedings when a civil suit is filed, and the referral structure that routes higher education complaints into yet another enforcement track collectively create an environment of significant uncertainty for students and institutions alike.

MICUA shares the Commission's goal of protecting students. We also share the concern that Maryland should be thoughtful about how it responds to changes in OCR's capacity and focus. For that reason, we respectfully urge the Committee not to advance HB 649 in its current form and instead support a deliberate, collaborative process over the next year. MICUA would welcome the opportunity to work with the Commission, the Administration, and legislative leadership to craft an approach that meaningfully protects students, responsibly addresses shared concerns about federal enforcement instability, and avoids creating a duplicative and highly uncertain legal environment for the very students this bill seeks to help.