



SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

House Bill 649

Advancing Equal Educational Opportunities for All Students in Maryland

April 1, 2026

Information

Chair Feldman, Vice Chair Kagan, and members of the Committee, thank you for the opportunity to offer testimony on House Bill 649. This legislation aims to expand statewide protections against discrimination and retaliation in educational settings by granting the Maryland Commission on Civil Rights (MCCR) direct authority to investigate and enforce prohibitions across a broad range of protected classes. In doing so, the bill establishes a private right of action, creates a new investigative framework, and outlines concurrent enforcement authority alongside other existing state education entities.

The University System of Maryland (USM) is comprised of twelve distinguished institutions and three regional higher education centers. We award eight out of every ten bachelor's degrees in the State of Maryland. Each USM institution contributes uniquely to the State's educational, economic, cultural, and civic landscape ranging from our Historically Black Institutions, to our comprehensive and research universities, to the nation's largest public online institution. With campuses stretching from Western Maryland to the Eastern Shore, the USM represents a deeply diverse array of missions, communities, and student populations.

While the USM understands and respects the bill's intent of creating a statewide process for resolving discrimination complaints arising out of educational settings during a time where federal complaint processes are being called into question, there are several implementation concerns which warrant careful consideration.

Federal Operations

The U.S. Department of Education Office of Civil Rights ("OCR" - the federal agency that conducts investigations of discrimination complaints filed against educational institutions) has diminished in size but remains operational.¹ OCR continues to engage with USM institutions on active matters and the institutions are still required to adhere to the federal civil rights statutes under OCR's purview, prohibiting discrimination in programs or activities receiving federal financial assistance: Title VI (race/color/national origin), Title IX (sex), Section 504 of the Rehabilitation Act (disability), the Age Discrimination Act, and Title II of the Americans with Disabilities Act. It would be helpful to understand from MCCR the actual problem that this legislation is trying to address.

¹ The Committee may wish to consider the potential for OCR to resume fuller operations in the federal administration in 2028.

Legal Standards

The legal standards applied by educational institutions in assessing discrimination complaints are based on federal and state laws. Under federal laws and analogous Maryland laws, the legal standards that apply to employment discrimination claims differ from those applicable to other claims that arise in educational settings; and the damages available in connection with administrative enforcement actions or private causes of action differ between employment discrimination claims and claims brought by students in educational settings. HB 649 is silent on how these distinctions will be addressed. To ensure that this legislation aligns with existing distinctions, USM asks that the Committee consider the following:

- The current language of the bill is so broadly written as to provide an additional basis for discrimination claims by employees, who are already protected by Maryland's Fair Employment Practices Act, State Gov't §§20-601 to 20-610 (MFEPA). In prohibiting discriminatory educational practices proposed § 20-7A-04 provides that "[a]n educational institution may not exclude an individual from participation in, deny a person the benefits, of, or subject an individual to discrimination within, any program or activity of the educational institution," based on membership in a protected class. This language can potentially be interpreted to include institution employees. MFEPA is based closely on its federal law analogue, Title VII, which differs in significant ways from Title VI, which is more analogous to HB 649. Thus, it is important to make clear that MFEPA is the exclusive State remedy for employment discrimination claims.
- Although State Gov't § 20-1009 sets forth limits that align with Title VII for remedies for unlawful employment practices that can be ordered by an administrative law judge or a circuit court, HB 649 includes no limits on remedies for discriminatory educational practices, although federal analogues Title VI and Title IX exclude noneconomic damages such as emotional distress. In addition, although Title VI and Title IX require "deliberate indifference" as a threshold for liability in civil actions, HB 649 identifies no standard for civil liability. Finally, Title VI requires a finding of intentional discrimination as a basis for an award of money damages, but HB 649 includes no similar requirement. USM asks that the Committee consider whether HB 649 should be amended to align with federal analogues.
- HB 649 contains no statute of limitations for claims of discriminatory educational practices, although § 20-1013 provides for statutes of limitation for employment discrimination claims. Although courts usually apply the general three-year statute of limitations to statutes that do not provide for an alternative limitations period, to avoid uncertainty, the Committee may wish to consider whether HB 649 should be amended to include a statute of limitations for claims of discriminatory educational practices.

- The bill also does not explicitly define the scope of remedies or enforcement mechanisms available to MCCR. Experience with other oversight bodies, such as OCR, demonstrates that enforcement actions can sometimes produce broad, open-ended, and resource-intensive institutional mandates. As drafted, HB 649 does not indicate the scope of remedies MCCR seeks to enforce, and we urge amendments to clarify the same.

MCCR Staffing

Over the last fifteen years, the USM institutions have built robust compliance programs based on federal and state statutes and accompanying guidelines. The USM institutions have had to expand their staffing levels to assess and adjudicate discrimination complaints, in response to increased attention from the federal government and civil rights awareness in institutional communities and education by our institutions. It is our understanding that there has been no ask from MCCR to expand staffing to handle claims filed in connection with educational settings. In the absence of additional resources, MCCR could be faced with an unmanageable complaint volume.

A second concern relates to the bill's intersection with federal Title IX enforcement. Title IX regulations have evolved with each change in federal administration, regarding investigative procedures, due process rights, evidentiary standards, and institutional responsibilities. MCCR's current structure and enforcement experience do not fully align with the specialized expertise federal regulations, and in particular Title IX, demand.

In addition, the structures of higher education institutions are not ones with which MCCR has experience, and these structures differ from employment settings. In the absence of experienced staff at MCCR, institutions may find themselves simultaneously defending complex complaints and educating the enforcing agency on fundamental Title IX principles as well as the nuances of higher education. This dual burden – defense and instruction – could be substantially mitigated through clearer statutory guardrails or express deference to specialized federal processes.

Board of Regents Reporting Requirements

House Bill 649 requires that the USM Board of Regents refer complaints of educational discrimination to MCCR for investigation. House Bill 649 applies to public *and* private institutions of higher education and postsecondary education, yet this reporting requirement does not extend to the governing boards of institutions of higher education or postsecondary education other than USM, resulting in different procedural paths for students depending on their institution.

Procedurally, it is unclear whether the reporting requirement as drafted allows for initial assessment by the Board and/or referral to the USM institution identified in a reported complaint. It is also unclear as to whether this reporting requirement relates solely to complaints that are reported to the Board of Regents *or* if it relates to complaints reported

to the USM constituent institutions to which the Board serves as a governing body. However intended, this provision may result in the Board being required to refer to MCCR complaints that are likely already being addressed by an institution either internally or through litigation, as well as complaints that are unsupported or frivolous. If the provision is intended to apply to *all* complaints reported to the USM constituent institutions, then the bill will necessitate additional staffing at MCCR.

The requirement may also identify and/or push complainants into a process to which they did not consent - which for student complaints may result in educational institutions violating student privacy rights under the Family Educational Rights and Privacy Act (FERPA). Although HB 649's proposed amendment to State Government §20-7A-03(B)(2) "makes the Commission a State Educational Authority Under the Federal Family Educational Rights and Privacy Act," it is unclear whether this designation is sufficient to permit the sharing of such records. Federal FERPA regulations suggest that absent authorization from a State or local educational authority, MCCR may need to be an educational agency or institution that receives funds from the U.S. Department of Education for FERPA to apply. See [34 CFR Part 99.1](#). This is a matter we suggest MCCR clarify before finalizing this legislation.

In addition, USM asks the Committee to consider whether students should have the option of having their complaints investigated and adjudicated by their institutions before they are submitted to an external agency.

Litigation Tracks

The USM notes a significant concern regarding the bill's authorization for MCCR to initiate civil actions in state court if a complaint has been brought before the Commission. While this provision strengthens enforcement options, it also creates the possibility of simultaneous administrative and judicial proceedings. Such parallel tracks may substantially increase litigation exposure, legal costs, and procedural complexity - particularly in circumstances in which federal processes, including Title IX, ADA, or OCR investigations, are already underway.

The USM appreciates the opportunity to share these observations and information regarding House Bill 649. We look forward to working constructively with the sponsors and the committee to ensure that Maryland's commitment to equitable educational environments is advanced in a manner that is effective, fair, and administratively sustainable.



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