

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland Higher Education Commission**  
(DLS Control No. 18-388)

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**Overview and Legal and Fiscal Impact**

These regulations implement provisions of Chapters 394 and 395 of 2018 relating to the reimbursement of attorneys that represent students and former students in sexual assault proceedings by establishing the Legal Representation Fund for Title IX Proceedings, administered by the Maryland Higher Education Commission, and accompanying requirements.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Maryland Higher Education Commission:**

Institutional Sexual Assault Policies: Legal Representation Fund for Title IX Proceedings:  
COMAR 13B.09.01.01 through .07

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**Legal Analysis**

**Background**

Chapters 394 and 395 of 2018 established a number of provisions for disciplinary proceedings that are required to be part of the sexual assault policy that each institution of higher education was already required to adopt under § 11-601 of the Education Article. The provisions required by these chapters include prompt and equitable hearings where both the alleged victim and the alleged violator can be heard; timely written notice of both individuals' rights and each step of the hearing process; the ability to participate in the disciplinary process, including access to the case file and the ability to submit evidence; the use of a specified standard of proof; a prohibition against mediation being used, except in certain circumstances; a prohibition against evidence about students' sexual histories, except under certain circumstances; and access to counsel for each student and former student, chosen from a list provided by the commission, and paid reasonable costs by the commission.

## **Summary of Regulations**

These regulations implement the requirements of Chapters 394 and 395 that pertain to the selection and payment of attorneys to represent students in the process of sexual assault disciplinary proceedings. Specifically, the regulations:

- require each institution of higher education to prominently display in its sexual assault policy and make available to students information on (1) obtaining from the commission a list of licensed attorneys who will represent complainants or respondents in the proceedings on a pro bono basis or for reduced legal fees; and (2) seeking reimbursement, through the complainant or respondent's attorney, for certain legal costs and fees;
- establish the Legal Representation Fund for Title IX Proceedings, and make reimbursement subject to the availability of funds appropriated through the State budget;
- authorize attorneys licensed in the State who have provided representation in a Title IX proceeding to seek reimbursement for up to 20 hours of legal costs and fees by submitting certain information to the commission about the proceeding and legal services provided;
- provide that the commission, after consultation with legal service providers with expertise about sexual assault and State and local bar associations, will create and maintain a list of attorneys who meet specified qualifications and agree to represent students or former students in Title IX proceedings either on a pro bono basis or at fees equivalent to those paid by the Maryland Legal Services Corporation under certain programs;
- require the Secretary of Higher Education to publish on the commission's website, the hourly fees and costs that may be charged by an attorney on the list;
- provide that the commission shall not recommend, insure, or endorse any attorneys and will not be liable for any acts or omissions of the attorneys;
- provide for reimbursement to attorneys if the commission determines, in its sole discretion that, among other things, the services pertained only to the Title IX proceedings, the costs and fees were reasonable, and funding is available, at rates equivalent to those paid to attorneys by the Maryland Legal Services Corporation; and
- provide that the commission's decision about whether to provide reimbursement and in what amount is final and not subject to further review.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The commission cites §§ 11-105(u) and 11-601 of the Education Article as statutory authority for these regulations. Section 11-105(u) authorizes the commission to adopt any rule or regulation necessary to carry out its powers and duties. Section 11-601 requires institutions of higher education to adopt and submit to the commission certain sexual assault policies including specified provisions. Among other things, § 11-601(d)(6) requires the commission to establish a list of attorneys and legal services programs willing to represent students on a pro bono basis or at fees equivalent to those paid under certain civil legal services programs and to pay reasonable costs and attorney's fees for students provided counsel in Title IX disciplinary proceedings.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Technical Corrections and Special Notes**

In response to suggestions from the Department of Legislative Services, staff for the commission agrees to add language to Regulation .07 stating that attorneys will be compensated at a rate equivalent to that paid by the Maryland Legal Services Corporation under certain legal services programs in accordance with § 11-601(d)(6)(ii) of the Education Article.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulations implement provisions of Chapters 394 and 395 of 2018 (Senate Bill 607/House Bill 913) relating to legal representation in Title IX proceedings. The commission advises that the regulations have no impact as they establish the process for reimbursing certain attorneys' fees subject to the availability of funds. The Department of Legislative Services concurs that there is no fiscal impact, but notes that the reason that the regulations have no fiscal impact is that the fiscal impact was already assumed in the fiscal and policy note for Senate Bill 607/House Bill 913.

The fiscal and policy note estimated that, based on one set of assumptions, general fund expenditures increase by \$412,800 annually beginning in fiscal 2020. Actual general fund expenditures will depend on the number of individuals who request and receive reimbursement.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concerns.

### **Contact Information**

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