



LEGISLATIVE NEWSLETTER

March 2, 2018

FINANCIAL AID REDUCTION NOTIFICATION GETS HOUSE HEARING

Yesterday, in House Appropriations, the University System of Maryland (USM) testified in opposition to House Bill 936. House Bill 936 requires public and independent institutions (within 30 days of a student's acceptance of enrollment) to provide notice of whether private scholarship money may result in a reduction of institutional gift aid and how much additional scholarship money the student may accept before the institutional financial aid will be reduced.

By law, institutions are already required to notify students when financial aid awards are adjusted. House Bill 936 could adversely impact students receiving aid. Implementation of the 30-day notification rule restricts an institution's ability to provide counseling to students should other resources be needed. Students often seek such help while pursuing other resources to pay for college. However, House Bill 936 hinders a student's ability to receive other types of aid if/when time expires on receipt of late aid disbursements because of the 30-day notification rule. When aid is adjusted, loans and work-study are the first to be changed. Given the federal and state award systems at USM institutions, House Bill 936 will create an additional administrative burden and unintended consequences.

Financial aid officers disclose the impact of additional aid received after packaging on a student's current aid package early in the aid process in many ways. USM institutions use federal entrance counseling, award letters, financial aid guides, the university catalogs and online content – examples of several ways this information is already communicated to students.

The addition of student communications (at times redundant to federal rules) is particularly burdensome given that the financial aid departments at some USM institutions do not have a centralized, communication system. These institutions will be limited in their ability to track communications, determine open rates, record communications in student files, track actions taken in the email, etc. At Salisbury

University, for example, one staff member coordinates communications to not only improve compliance but the student experience and data analytics as well. Finally, the calculations about maximum aid are very complicated because the maximum amounts change based on changes to student's Cost of Attendance based on changes in housing status, enrollment level, and tuition residency.

For these reasons, the USM urges an unfavorable report on House Bill 936.

STUDENT CONDUCT PROPOSAL ADDS ATTORNEYS TO PROCEEDINGS

Again, on Thursday in House Appropriations, USM officials weighed-in on House Bill 913, which would require higher education institutions to establish a new disciplinary proceedings policy and process for resolving student allegations of sexual assault. The bill creates an extensive list of "rights" for a student who alleges a violation of sexual assault. It also prohibits an institution from considering evidence and making findings. It also sets a new standard for determining the outcome of an investigation, restricts the use of mediation to resolve complaints, expands the grounds for appeal, and establishes the conditions for the presence of an attorney and associated cost for legal counsel. While perhaps well-intended, the bill's expansive scope creates uncertainty and confusion in Title IX enforcement.

First among these concerns is the bill's attempt to define a required new policy, process, and set of rights for students. The bill's framework and provisions are unclear. For example, it is unclear whether House Bill 913 seeks to replace the required disciplinary procedures and actions that already exist at USM institutions and that are established in current law. Maryland law currently requires all institutions of higher education to adopt a written policy on sexual assault that also includes a disciplinary process. All USM institutions have these policies and processes in place that go beyond what Maryland law requires. In 2014, the USM revised and updated its sexual assault policy and the requirements for all USM institutions.

The USM's policy and the policies of each institution are now based upon the federal guidelines set forth in 2011 and the subsequent guidance issued by the Obama Administration in 2014. This guidance includes providing students with information regarding their rights and disciplinary processes and guidelines for participation in the process. Our policies also provide requirements for timely written notices, appeals processes, and information on counseling and resources. These policies were designed to foster a system-wide climate free from sexual misconduct through policies and procedures that encourage prompt reporting of incidents, prohibit retaliation, and promote timely, fair and impartial investigation and resolution of sexual misconduct cases in a manner that eliminates the sexual misconduct, prevents its recurrence, and addresses its effects. The USM policy was updated in 2015 to incorporate the more expansive expectations of the federal guidelines.

House Bill 913 also requires the presence and participation of attorneys in certain circumstances. The imposition of the attorney requirement would have a chilling effect on the student conduct process by creating a hostile attorney-driven courtroom setting that could re-traumatize the students. Currently, USM policies allow each student complainant and respondent to be accompanied during the investigation process and related proceedings with an advisor of their choice. This advisor could be anyone, including an attorney, and every student involved has this right to be accompanied by an attorney. The attorney's role, however, is limited to a non-speaking role. This limitation is common practice for good reason – to prevent intimidation and attacking questions presented to the parties or witnesses involved. We already know from current experience that inclusion of attorneys (even as non-speaking advocates) has also lengthened the time to achieve the final disposition of many cases.

Perhaps most critically, the criminal-justice-related language and provisions of House Bill 913 would, in effect, convert the administrative processes of the universities into on-campus courts of law. Universities were never meant to serve in this capacity. We do not have the training, experience, skills or missions to become a substitute for situations that should be appropriately handled in court.

UNIVERSAL MANDATED SEXUAL RESPONSE TRAINING PROPOSED

Yesterday, in House Appropriations Committee, USM supported House Bill 1238 but will work with the sponsor on amendments to conform the bill to match the current practice at USM institutions.

House Bill 1238 requires each institution of higher education, beginning fall 2018, to provide annual survivor-centered and trauma-informed sexual assault response training to employees, contractors, and students. Additionally, House Bill 1238 requires each institution to provide 8 hours annually of survivor-centered and trauma-informed sexual assault response training to Title IX coordinators, investigators, adjudicators and campus police. With the USM's 12 unique member institutions with ranging student demographics, campus locations, and educational delivery from classroom to online – the method, frequency and type of training that we offer to our campus communities is also very diverse. The USM has concerns about the approach of House Bill 1238, which seeks to establish a one-size fits all method that does not reflect the differences among the USM institutions. We would seek to amend the bill to allow for this diversity among the institutions.

The bill emphasizes the importance of certain types of training, namely “survivor-centered” and “trauma-informed” training. It is paramount to understand the significance of trauma-informed training, especially for individuals at USM institutions who serve as the front-facing members responsible for handling reported incidents of sexual assault. The principal model for sexual assault response on most college campuses is to designate a small number of people who are highly trained. This group of trained individuals serve as the point of contact for victims, respondents, campus community members reporting sexual assault incidents, and individuals in need of assistance. This specially trained

group consists primarily of campus Title IX coordinators and deputies, investigators, adjudicators, law enforcement officials, rape crisis center personnel and licensed mental health counselors. The training that they receive covers a range of topics, inclusive of the effects of trauma, various types of sexual assault and misconduct, and the need to be responsive to victims, as well as respondents.

However, the USM is concerned about the bill's reference to "survivor-centered" training, as it may run afoul of the U.S. Department of Education Office of Civil Rights' (OCR) Title IX guidance to institutions that investigations should be impartial to both complainant and respondent, and that training materials, investigative and decision-making approaches should not apply generalizations that may violate Title IX of the Education Act Amendments of 1972. This awareness is particularly critical for those who adjudicate sexual misconduct matters and who must be fair and unbiased.

The bill also mandates who should receive the training. The bill provides that "training must be provided to individuals that may be involved in a student report of an alleged incident." While the bill language suggests that the recipients of the mandated training are a selective group, the bill's language in effect has broad impact and would require that every member of each USM institution receive the annual training.

While this level of training is noble, it is impractical for many institutions, labor intensive and costly. Each USM institution determines the appropriate frequency that its campus can accommodate and the manner with which to train its different populations. For example, some institutions choose to train incoming students with other sexual assault awareness activities during the academic year. Some institutions train employees every two years. This flexibility to design a training program that matches the needs of each campus is very important and critical to ensuring that the information communicated through the training method is received and retained.

House Bill 1239 establishes a \$1 million grant program at MHEC to provide funding for sexual assault training programs. The USM institutions appreciate the grant component of the bill, because USM institutions have borne the cost of the added focus on sexual assault training in recent years.