

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1142 (Delegate Hornberger)  
Appropriations

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Public Senior Higher Education Institutions - Disciplinary Proceedings -  
Students and Student Organizations

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This bill establishes the right to an attorney or nonattorney advocate for a student or an officially recognized student organization during a specified disciplinary proceeding at a public four-year institution of higher education. The bill does not apply to matters involving academic misconduct or to any matter that may not result in the suspension, expulsion, or removal of a student or student organization. The attorney or nonattorney advocate must represent the student or student organization – at the student’s or student organization’s expense – and may fully participate during any disciplinary proceeding or other specified procedures. The bill also establishes that a student or organization has the right to appeal an initial decision under certain circumstances, and it establishes procedures for an appeal.

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Fiscal Summary

**State Effect:** Public four-year institutions of higher education can meet the requirements of the bill using existing resources. An institution *may* refund some tuition and fee revenue as explained below. The Maryland Higher Education Commission (MHEC) can adopt the required regulations using existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** Except as specified, the bill must be effective notwithstanding any other provision of law affecting public four-year institutions of higher education. The bill also prohibits specified conflicts of interest, and it requires specified procedures regarding evidence. Finally, the bill requires an institution to inform any student or student organization of their rights under the bill in writing before a disciplinary proceeding or other procedure is scheduled. MHEC must adopt regulations for disciplinary procedures in accordance with the bill that affect all public four-year higher education institutions.

### *Right to Appeal*

A student or student organization that is suspended, removed, or expelled from a public four-year higher education institution for a violation of the rules or policies of that institution must have the right to appeal the institution's initial decision. An appeal must be made within one year of the receipt of final notice of the institution's initial decision. The right of a student or student organization to have an attorney or a nonattorney advocate also applies to the appeal. Issues that may be raised on appeal include new evidence, contradictory evidence, and evidence that the student or student organization was not afforded due process.

The institutional administrator or body considering an appeal may consider police reports, transcripts, and the outcomes of any civil or criminal proceeding directly related to the appeal. The institutional administrator or body considering an appeal may grant the appeal, deny the appeal, order a new hearing, or reduce or modify the suspension or expulsion.

If the appeal results in the reversal of the decision or a lessening of the sanction, the public four-year higher education institution *may* reimburse the student for any tuition or fees paid to the institution by the student or student organization during the period of suspension, removal, or expulsion that have not been previously refunded.

### *Procedures*

The public four-year higher education institution must ensure that no conflicts of interest exist by ensuring that none of the following roles are carried out by the same person: representative for a student or student organization; investigator; institutional prosecutor; adjudicator of the disciplinary hearing; and appellate adjudicator.

The institution must ensure that all parties to a disciplinary hearing or other procedure designed to address a violation of an institution's rules have access to all material evidence known to the institution no later than one week before the start of the disciplinary hearing. The bill lists examples of what evidence may include. The institution must make good

faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative, but is not required to use formal rules of evidence.

**Current Law/Background:** By statute, students and student organizations are not granted the right to an attorney or a nonattorney advocate during a disciplinary proceeding or other procedure designed to address a violation of an institution's rules, nor does a student or student organization have the right to an appeal. Public four-year institutions set their own disciplinary hearing rules. Institutions also establish which behavioral misconducts are subject to suspension, expulsion, or removal of a student or student organization. Behavioral misconduct may include violations of alcohol or drug policies.

A sampling of the student disciplinary hearing rules from public four-year institutions regarding attorney and nonattorney advocates follows.

At the University of Maryland, College Park Campus a student may be assisted by a representative, who may be an attorney. Representatives are allowed to address the board, in accordance with the hearing guidelines. A student must inform the Office of Student Conduct, in writing, at least five business days prior a scheduled hearing.

At Morgan State University, an advisor may attend a student's disciplinary hearing. The advisor may not speak or present the student's case but may provide the student with advice during the course of the proceeding.

At St. Mary's College of Maryland, a student may be assisted by an advisor of his or her choice to provide support through the conduct process, subject to specified limitations. An advisor may not be a witness or other party to the proceeding. Complainants and respondents who wish to consult with an attorney may do so at their own expense. An advisor has no speaking role in the hearing and is not permitted to ask or answer questions or address the hearing board. An advisor may only provide advice to the complainant or respondent in a nondisruptive manner (such as communicating in writing). Any case must be presented by the student. All communication regarding the conduct process will be directed to the student. An advisor will not be permitted to communicate on the student's behalf.

**State Fiscal Effect:** Public four-year institutions of higher education can meet the requirements of the bill using existing resources. Public four-year institutions of higher education may need to make changes to their disciplinary hearing rules, which the institutions can accomplish using existing resources. Further, any changes to disciplinary hearing procedures can be handled using existing resources.

The bill specifies that, if an appeal results in the reversal of the decision or a lessening of a sanction, a public four-year institution *may* reimburse a student for any tuition or fees paid

to the institution by the student or student organization during the period of suspension, removal, or expulsion that have not been previously refunded; thus, public four-year institutions *may* refund some tuition and fee revenue. It is unknown to what extent an institution may have refunded tuition or fee revenue absent this bill. The amount of tuition or fee revenue that may be refunded is at the discretion of each institution and depends on the specific disciplinary hearings held each year, which cannot be reliably estimated.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Legislative Services

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