

HOUSE BILL 1142

F2, P3

7lr1985

By: **Delegate Hornberger**

Introduced and read first time: February 9, 2017

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Senior Higher Education Institutions – Disciplinary Proceedings –**
3 **Students and Student Organizations**

4 FOR the purpose of establishing the right to an attorney or a nonattorney advocate for a
5 student or student organization at certain disciplinary proceedings at public senior
6 higher education institutions; requiring certain represented persons to pay for the
7 attorney or nonattorney advocate; authorizing the attorney or nonattorney advocate
8 to participate throughout the disciplinary proceedings, including by performing
9 certain services; establishing a certain right of appeal; requiring that any appeal be
10 made within a certain period of time; establishing that the right to an attorney or a
11 nonattorney advocate also applies to appeal; establishing certain procedural issues
12 that may be raised on appeal; providing for certain types of evidence that may be
13 considered on appeal; providing for certain procedural outcomes that may be granted
14 on appeal; authorizing public senior higher education institutions to reimburse
15 certain persons for certain expenses under certain circumstances; requiring public
16 senior higher education institutions to ensure that no conflicts of interest exist by
17 taking certain measures and that certain parties have access to certain evidence a
18 certain period of time before the start of a disciplinary proceeding; requiring public
19 senior higher education institutions to make certain efforts regarding certain
20 evidence, but not requiring these institutions to adopt certain rules of evidence;
21 requiring public senior higher education institutions to inform certain people of
22 certain rights; requiring the Maryland Higher Education Commission to adopt
23 certain regulations; providing for the application of this Act; defining a certain term;
24 and generally relating to disciplinary proceedings at public senior higher education
25 institutions.

26 BY adding to
27 Article – Education
28 Section 11–1201 through 11–1207 to be under the new subtitle “Subtitle 12.
29 Disciplinary Proceedings for Students and Student Organizations”
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

**SUBTITLE 12. DISCIPLINARY PROCEEDINGS FOR STUDENTS AND STUDENT
ORGANIZATIONS.**

11-1201.

IN THIS SUBTITLE, “STUDENT” INCLUDES AN ACCUSER OR A VICTIM.

11-1202.

(A) THIS SUBTITLE 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.

(B) EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, THIS
SUBTITLE SHALL BE EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISIONS OF
LAW AFFECTING PUBLIC SENIOR HIGHER EDUCATION INSTITUTIONS.

11-1203.

(A) ANY STUDENT ENROLLED IN, OR STUDENT ORGANIZATION OFFICIALLY
RECOGNIZED AT, A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL HAVE
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.

(B) THE ATTORNEY OR NONATTORNEY ADVOCATE:

(1) SHALL REPRESENT THE STUDENT OR STUDENT ORGANIZATION AT
THE STUDENT’S OR STUDENT ORGANIZATION’S EXPENSE; AND

(2) MAY FULLY PARTICIPATE DURING ANY DISCIPLINARY
PROCEEDING OR OTHER PROCEDURE INCLUDING BY:

(I) MAKING OPENING AND CLOSING STATEMENTS;

(II) EXAMINING AND CROSS-EXAMINING WITNESSES; AND

(III) PROVIDING THE STUDENT OR STUDENT ORGANIZATION WITH SUPPORT, GUIDANCE, AND ADVICE.

11-1204.

(A) A STUDENT OR STUDENT ORGANIZATION THAT IS SUSPENDED, REMOVED, OR EXPELLED FROM A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION FOR A VIOLATION OF THE RULES OR POLICIES OF THAT INSTITUTION SHALL HAVE THE RIGHT TO APPEAL THE INSTITUTION'S INITIAL DECISION.

(B) AN APPEAL MADE UNDER THIS SECTION SHALL BE MADE WITHIN 1 YEAR OF THE RECEIPT OF FINAL NOTICE OF THE INSTITUTION'S DECISION.

(C) THE RIGHT OF A STUDENT OR STUDENT ORGANIZATION TO HAVE AN ATTORNEY OR A NONATTORNEY ADVOCATE UNDER § 11-1203 OF THIS SUBTITLE ALSO APPLIES TO THE APPEAL.

(D) ISSUES THAT MAY BE RAISED ON APPEAL INCLUDE:

(1) NEW EVIDENCE;

(2) CONTRADICTORY EVIDENCE; AND

(3) EVIDENCE THAT THE STUDENT OR STUDENT ORGANIZATION WAS NOT AFFORDED DUE PROCESS.

11-1205.

(A) 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.

(B) THE INSTITUTIONAL ADMINISTRATOR OR BODY CONSIDERING AN APPEAL MAY:

(1) GRANT THE APPEAL;

(2) DENY THE APPEAL;

(3) ORDER A NEW HEARING; OR

(4) REDUCE OR MODIFY THE SUSPENSION OR EXPULSION.

(C) IF THE APPEAL RESULTS IN THE REVERSAL OF THE DECISION OR A LESSENING OF THE SANCTION, THE PUBLIC SENIOR 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.

11-1206.

(A) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL ENSURE THAT NO CONFLICTS OF INTEREST EXIST BY ENSURING THAT NONE OF THE FOLLOWING ROLES ARE CARRIED OUT BY THE SAME PERSON:

- (1) REPRESENTATIVE FOR A STUDENT OR STUDENT ORGANIZATION;
- (2) INVESTIGATOR;
- (3) INSTITUTIONAL PROSECUTOR;
- (4) ADJUDICATOR OF THE DISCIPLINARY HEARING; AND
- (5) APPELLATE ADJUDICATOR.

(B) (1) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL 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 1 WEEK BEFORE THE START OF THE DISCIPLINARY HEARING.

(2) THE EVIDENCE MAY INCLUDE:

- (I) COMPLAINT STATEMENTS;
- (II) THIRD-PARTY WITNESS STATEMENTS;
- (III) ELECTRONICALLY STORED INFORMATION;
- (IV) WRITTEN COMMUNICATIONS;
- (V) SOCIAL MEDIA POSTS; AND
- (VI) DEMONSTRATIVE EVIDENCE.

1 **(C) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL MAKE**
2 **GOOD FAITH EFFORTS TO INCLUDE RELEVANT EVIDENCE AND EXCLUDE EVIDENCE**
3 **THAT IS NEITHER RELEVANT NOR PROBATIVE, BUT IS NOT REQUIRED TO USE**
4 **FORMAL RULES OF EVIDENCE.**

5 **(D) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL INFORM**
6 **ANY STUDENT OR STUDENT ORGANIZATION OF THE STUDENT'S OR STUDENT**
7 **ORGANIZATION'S RIGHTS UNDER THIS SUBTITLE IN WRITING BEFORE A**
8 **DISCIPLINARY PROCEEDING OR OTHER PROCEDURE IS SCHEDULED.**

9 **11-1207.**

10 **THE COMMISSION SHALL ADOPT REGULATIONS FOR DISCIPLINARY**
11 **PROCEDURES IN ACCORDANCE WITH THIS SUBTITLE THAT AFFECT ALL PUBLIC**
12 **SENIOR HIGHER EDUCATION INSTITUTIONS.**

13 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
14 **October 1, 2017.**