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HOUSE BILL NO. 2120

Offered January 13, 2021
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A BILL to amend and reenact §§ 23.1-409, 23.1-802, and 23.1-1303 of the Code of Virginia, relating to public institutions of higher education; governing boards; disclosures.

Patrons—Keam, Aird, Helmer, Kory, Levine, Mugler and Rasoul

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 23.1-409, 23.1-802, and 23.1-1303 of the Code of Virginia are amended and reenacted as follows:

§ 23.1-409. Transparency in higher education information.

Each baccalaureate public institution of higher education shall maintain and update annually no later than September 30 a tab or link on the home page of its website that shall include the following information:

1. The institution's six-year undergraduate graduation rate for each of the past 10 years;

2. The institution's freshman-to-sophomore retention rate for full-time undergraduate students for each of the past 10 years;

3. The institution's average annual percentage increase in base undergraduate tuition for each of the past 10 years;

4. The institution's average annual percentage increase in mandatory undergraduate comprehensive student fees for each of the past 10 years;

5. A link to the annual report of the use of student fees as required by § 23.1-408;

6. A link to the postsecondary education and employment data referenced in subsection D of § 23.1-204.1; and

7. A summary of the institution's budget, consistent with the institution's annual budgeting process, that includes (i) the major budget units (MBUs) in the institution and standard expenditure categories within each MBU for the current fiscal year and the previous fiscal year or (ii) a link to the annual reports required by subdivision B ~~10~~ *11* of § 23.1-1303.

§ 23.1-802. Student mental health; policies; website resource; training.

A. The governing board of each public institution of higher education shall develop and implement policies that (i) advise students, faculty, and staff, including residence hall staff, of the proper procedures for identifying and addressing the needs of students exhibiting suicidal tendencies or behavior and (ii) provide for training where appropriate. Such policies shall require procedures for notifying the institution's student health or counseling center for the purposes set forth in subdivision B ~~4~~ *5* of § 23.1-1303 when a student exhibits suicidal tendencies or behavior.

B. The board of visitors of each baccalaureate public institution of higher education shall develop and implement policies that ensure that after a student suicide, affected students have access to reasonable medical and behavioral health services, including postvention services. For the purposes of this subsection, "postvention services" means services designed to facilitate the grieving or adjustment process, stabilize the environment, reduce the risk of negative behaviors, and prevent suicide contagion.

C. The board of visitors of each baccalaureate public institution of higher education shall establish a written memorandum of understanding with its local community services board or behavioral health authority and with local hospitals and other local mental health facilities in order to expand the scope of services available to students seeking treatment. The memorandum shall designate a contact person to be notified, to the extent allowable under state and federal privacy laws, when a student is involuntarily committed, or when a student is discharged from a facility. The memorandum shall provide for the inclusion of the institution in the post-discharge planning of a student who has been committed and intends to return to campus, to the extent allowable under state and federal privacy laws.

D. Each baccalaureate public institution of higher education shall create and feature on its website a page with information dedicated solely to the mental health resources available to students at the institution.

E. Each resident assistant in a student housing facility at a public institution of higher education shall participate in Mental Health First Aid training or a similar program prior to the commencement of his duties.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,

article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions, *including providing electronic access for students, parents, and members of the general public to observe meetings remotely*; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection H of § 2.2-3707 and § 2.2-3707.1, *within one week of the meeting's adjournment,* (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish and maintain on the institution's website by way of a tab or link on the website's home page a webpage that includes or has links to (i) a listing of all governing board members, including by whom each member was appointed; (ii) a listing of all committees and subcommittees created by the governing board and the membership of each committee or subcommittee; (iii) a schedule of all upcoming meetings of the full board and its committees and subcommittees; (iv) an archive of past agendas and supporting materials for each meeting of the governing board and its committees and subcommittees; and (v) a listing of direct electronic means of contact for each board member;

~~2.~~ *3.* Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

~~3.~~ *4.* Assist the Council in enforcing the provisions relating to eligibility for financial aid;

~~4.~~ *5.* Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

~~5.~~ *6.* Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

~~6.~~ *7.* Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

~~7.~~ *8.* Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

~~8.~~ *9.* In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during

any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members;

~~9.~~ *10.* If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

~~10.~~ *11.* Submit *and make publicly available on the institution's website* the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

~~11.~~ *12.* No later than December 1 of each year, report to the Council (i) the value of investments as reflected on the Statement of Net Position as of June 30 of the previous fiscal year, ~~excluding~~ *including* any funds derived from endowment donations, endowment income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year; and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such investment earnings spans more than one fiscal year, the report shall reflect the commitments made in each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and the University of Virginia shall ~~exclude~~ *include* the value of and earnings on any investments held by the Virginia Commonwealth University Health System Authority and the University of Virginia Medical Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested in securities.

~~12.~~ *13.* Submit to the General Assembly and the Governor *and make publicly available on the institution's website* an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website;

~~13.~~ *14.* Make available to any interested party upon request a copy of the portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to institutions of higher education;

~~14.~~ *15.* Adopt policies or institution regulations regarding the ownership, protection, assignment, and use of intellectual property and provide a copy of such policies or institution regulations to the Governor and the Joint Commission on Technology and Science. All employees, including student employees, of public institutions of higher education are bound by the intellectual property policies or institution regulations of the institution employing them; ~~and~~

~~15.~~ *16.* Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution~~.~~*;*

17. Solicit the input of the institution's faculty senate or its equivalent (i) at least twice per academic year at a public venue and (ii) regarding the search for candidates for the position of chief executive officer of the institution at a public or private venue; and

18. Solicit public comment, and each board member shall confirm in writing that he has reviewed such comment, prior to casting any vote that establishes or amends a new university policy, capital improvement project, budget, or contract with a public or private entity that will have an impact on the rights of students, faculty, and staff. Such policies or projects include, but are not limited to those relating to student housing, the academic calendar, and public health measures. Nothing in this subdivision shall be construed to apply to any public comment processes relating to tuition and fees or academic curricular requirements for graduation. This information related to board members and their votes required in this subsection shall be recorded and made publicly available on the institution's website consistent with requirements for other board information to be made publicly available.