

Department of Planning and Budget

2015 Fiscal Impact Statement

1. Bill Number: HB 1321

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Delegate Morris

3. Committee: Education

4. Title: Permit students the right to hire counsel in institutional disciplinary cases

5. Summary: This bill grants any student enrolled at one of Virginia's public institutions of higher education, with the exception of Virginia Military Institute, who is alleged to have committed an offense that is punishable by a suspension of more than 10 days or by expulsion pursuant to the institution's policies for the conduct of students, the right to hire legal counsel or a non-attorney advocate at his discretion and expense. This bill does not provide the student in question the right to representation at public expense.

6. Budget Amendment Necessary: Yes. Items 56, 147, 151, 162, 166, 174, 178, 193, 204, 210, 221, and 227

7. Fiscal Impact Estimates: Preliminary (see Section 8)

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	\$0	0.0	GF
2015	\$0	0.0	NGF
2016	\$208,667	2.0	GF
2016	\$796,120	8.0	NGF
2017	\$208,667	2.0	GF
2017	\$796,120	8.0	NGF
2018	\$208,667	2.0	GF
2018	\$796,120	8.0	NGF
2019	\$208,667	2.0	GF
2019	\$796,120	8.0	NGF
2020	\$208,667	2.0	GF
2020	\$796,120	8.0	NGF
2021	\$208,667	2.0	GF
2021	\$796,120	8.0	NGF

8. Fiscal Implications: There are 16 public institutions of higher education in the Commonwealth, excluding Virginia Military Institute. Each institution operates at least one, but sometimes multiple, disciplinary systems with the power to expel or suspend students. While accused students typically have a right to an adviser from the campus community and

some are permitted to have an attorney attend hearings, none of those systems currently permit students to have an attorney act as an advocate during the disciplinary proceedings. These proceedings are intended to be primarily educational for both the students who may need to take responsibility for their actions and the community members endeavoring to hold them accountable. These systems are usually operated by a combination of students and student affairs professionals with the advice, but not direct involvement, of the institution's attorney.

Should students be afforded the right to representation, as proposed by this bill, it is anticipated that the proceedings would become more legalistic, requiring changes to their structure and preparation. The guidelines for the processes and the training of the decision-makers would need to address the types of issues that lawyers are likely to inject into the proceedings (objections, evidentiary concerns, etc.).

Last year, the federal government issued guidance and regulations affecting how higher education institutions may address student cases involving such areas as sexual violence, sexual harassment, gender discrimination, dating/domestic violence, and stalking. In April 2014, while answering Title IX questions, the United States Department of Education's (USDOE) Office for Civil Rights (OCR) indicated that if an institution permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Furthermore, any school-imposed restrictions on the ability of lawyers or advisors to speak or otherwise participate in the proceedings must also apply equally.

The Violence Against Women Act's (VAWA) final regulations, dated October 20, 2014, but effective July 1, 2015, require that a higher education institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. The regulations also provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of his choice. While there can be no limit on the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding, the institution is within its right to establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

The Office of the Attorney General (OAG) believes that it is highly likely that the USDOE would interpret both the OCR and VAWA mandates as requiring the institution to pay the cost of counsel for the complainant in order to maintain the required parity. Given this increased need for direct attorney involvement in the administration of the disciplinary systems of Virginia's institutions of higher education, the OAG estimates that an additional full-time attorney at an average cost of \$99,515 would be required at each of the larger campuses that have attorneys on-site (University of Virginia, Virginia Tech, George Mason University, Virginia Commonwealth University, and Old Dominion University) for a total cost to the institutions of \$497,575. In addition, the OAG believes that the requirements of this proposed legislation would increase the current workload by one-half of one position for six other institutions with on-campus attorneys (College of William and Mary, Christopher

Newport University, James Madison University, Norfolk State University, Virginia Community College System, and Virginia State University) resulting in an additional cost of \$298,545. The direct costs associated with the institutions' attorneys are typically born by their employers. These costs, totaling \$796,120, would be covered by institutional operating funds generated from tuition and fees.

The responsibility of supervising the additional attorneys and increased workload would fall on the OAG. In addition, Virginia's remaining public institutions of higher education not listed above could probably be advised centrally by OAG attorneys. Legal consulting on these issues would likely require the presence of central office OAG attorneys on campus with the associated travel time. Therefore, it is estimated that two additional OAG attorneys would be needed to sufficiently protect the Commonwealth's interests at an estimated cost of \$208,667 annually in general fund support.

Finally, it is anticipated that all public institutions of higher education would incur costs associated with training staff and students on the processes that would need to be implemented as a result of this proposed legislation. These potential costs cannot be determined.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia's public institutions of higher education and the Office of the Attorney General

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** A possible revision to this proposed legislation that could lessen the estimated fiscal impact to the institutions would be to include a provision, similar to those included in the OCR guidance and VAWA regulations, that the institution of higher education could limit the participation of the attorney or non-attorney advocate for the accused student. The following amendment could be added to the end of paragraph A:
"The institution may establish restrictions regarding the extent to which the licensed attorney or non-attorney advocate may participate in the disciplinary or other institutional proceeding."

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c: Secretary of Education