

23102027D

SENATE BILL NO. 1410

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact § 23.1-1303 of the Code of Virginia, relating to public institutions of higher education; duties of governing boards; development of policies expanding protection of academic freedom.*

Patron—Hashmi

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-1303 of the Code of Virginia is amended and reenacted as follows:

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual:

"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.

"Political" means relating to a partisan party or group, a candidate for partisan political office, or an idea, viewpoint, or belief or coordinated body of ideas or beliefs characteristic of a political party or group.

"Political purpose" means an act done with or motivated by the intention to influence, directly or indirectly, (i) the viewpoints or dispositions of others regarding a candidate for partisan political office, a political party, or partisan political issue or (ii) to promote, advance, limit, or suppress a specific political interest, candidate, ideology, or belief or viewpoint of a partisan political party.

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; (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, (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 (i) a listing of all board members, including the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of all committees created by the board and the membership of each committee; (iii) a schedule of all upcoming meetings of the full board and its committees and instructions for the public to access such meetings; (iv) an archive of agendas and supporting materials for each meeting of the governing board and its committees that was held; and (v) an email address or email addresses that allow board members to receive public communications pertaining to board business;

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;

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

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

INTRODUCED

SB1410

59 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
60 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
61 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
62 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
63 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
64 treating the student has made a part of the student's record a written statement that, in the exercise of
65 his professional judgment, the notification would be reasonably likely to cause substantial harm to the
66 student or another person. No public institution of higher education or employee of a public institution
67 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
68 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
69 by the institution or its employees;

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

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

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

79 9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29
80 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a
81 closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief
82 executive officer's performance. Any change to the chief executive officer's employment contract during
83 any such meeting or any other meeting of the board shall be made only by a vote of the majority of the
84 board's members;

85 10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
86 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
87 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
88 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
89 the institution or his designee at least annually a report on the human research projects reviewed and
90 approved by the committee and require the committee to report any significant deviations from approved
91 proposals;

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

95 12. No later than December 1 of each year, report to the Council and make publicly available on the
96 institution's website (i) the value of investments as reflected on the Statement of Net Position as of June
97 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment
98 income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year;
99 and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such
100 investment earnings spans more than one fiscal year, the report shall reflect the commitments made in
101 each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and
102 the University of Virginia shall exclude the value of and earnings on any investments held by the
103 Virginia Commonwealth University Health System Authority and the University of Virginia Medical
104 Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid,
105 and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been
106 invested in securities;

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

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

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

120 16. Adopt policies that are supportive of the intellectual property rights of matriculated students who

are not employed by such institution; ~~and~~

17. Solicit the input of representatives of the institution's faculty senate or its equivalent (i) at least twice per academic year on topics of general interest to the faculty and (ii) in advance of decisions to be made on the search for the institution's new chief executive officer; *and*

18. *Adopt policies and institutional regulations prohibiting any actions by the institution or its employees or contractors that would, except as otherwise permitted by the First Amendment to the United States Constitution and § 23.1-401, (i) ban, limit, or suppress the free expression or human aspiration, activism, or support for human rights, equity, or inclusion of any individual in the Commonwealth, including any student, employee, or contractor of the institution; (ii) limit, restrict, or suppress the academic freedom of the institution or of any student, employee, or contractor of the institution when such action is motivated by a political purpose, including by (a) canceling a course, conference, or other academic activity, (b) banning, limiting, or distorting the teaching of history or related academic subjects, or (c) otherwise interfering with the academic activities of the institution; (iii) provide a pretext for firing, dismissing, or preventing the hiring of any student, employee, or contractor of the institution on the basis of such individual's freedom of expression, political activism, or support of human rights, equity, or inclusion; (iv) provide a pretext for taking coercive legal action against any supporter of any peaceful form of economic, civic, or cultural protest in support of human rights, equity, or inclusion; or (v) privilege the political interests of any federal or state government, corporation, institution, or religious organization or entity, foreign or domestic.*