
Higher Education Committee

HB 1962

Brief Description: Concerning disciplinary procedures at private institutions of higher education.

Sponsors: Representatives Jinkins, Fey, Farrell, Sawyer, Fitzgibbon, Ortiz-Self and Pollet.

Brief Summary of Bill

- Requires private institutions of higher education that participate in state student financial aid programs to have policies establishing disciplinary procedures for violations of their student code of conduct.
- Mandates that private institutions of higher education submit to the Student Achievement Council (Council) a summary report of its disciplinary proceedings resulting in a student suspension or expulsion, or in the institution refusing to grant a degree or certification.
- Provides that the Council may sanction a private institution of higher education that fails to comply with its own policies and procedures regarding disciplinary proceedings for student code of conduct violations.

Hearing Date: 2/14/17

Staff: Alex Arkfeld (786-7290).

Background:

Regulation of Degree-Granting Institutions.

The Degree-Granting Institutions Act (Act) requires all degree-granting institutions operating in Washington to obtain authorization from the Washington Student Achievement Council (Council). The Council enforces minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, and financial stability.

The Attorney General's Office may enforce the Act. Institutions that operate and offer degrees without the Council's authorization in willful violation of the authorization requirement are

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guilty of a gross misdemeanor and will be punished by a fine of up to \$1,000, subject to up to one year in jail, or both. A violation of the Act or its regulations also constitutes an unfair or deceptive practice in violation of the Consumer Protection Act.

The Council investigates complaints over unfair business practices and may attempt to bring about a settlement. If, after a hearing, the Council finds that an unfair business practice did occur, the Council must order the violator to cease and desist from the practice and may impose a civil penalty of up to \$100 and order full or partial restitution.

Washington's public colleges and universities are exempt from the authorization requirements, and the Council may exempt other institutions that meet its exemption requirements. An exemption is not permanent. Institutions currently exempt from authorization include, but are not limited to, the following:

- Gonzaga University;
- Pacific Lutheran University;
- Seattle University;
- University of Puget Sound; and
- Whitman College.

Disciplinary Procedures for Students.

The procedures afforded to students in disciplinary proceedings are dependent on whether a college or university is public or private. For example, public colleges and universities are considered agencies and are therefore subject to the Administrative Procedure Act (APA), which provides procedural requirements for student disciplinary proceedings. Further, these schools are considered an arm of the government, subjecting them to constitutional due process. Private colleges and universities, however, are not considered agencies or arms of the state and are thus not subject to the APA or constitutional due process. Students at private institutions who believe that their disciplinary proceedings lacked adequate procedural safeguards may be limited to bringing a contract claim based on the institution's student handbook or code of conduct.

Title IX.

Title IX is a federal civil rights law that prohibits discrimination based on sex in federally funded education programs and activities. All public and private colleges and universities receiving any federal financial assistance must comply with Title IX. Under Title IX, colleges and universities must adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex-discrimination complaints.

The United States Department of Education's published guidance on Title IX lists the elements that the Office of Civil Rights will look for when reviewing whether a school's procedures are adequate. While colleges and universities have flexibility in how they structure the investigative process, the school must give the complainant any rights that it gives to the alleged perpetrator. For example, if the school allows one party to have lawyers or advisors, it must allow the same for the other party.

Summary of Bill:

Private institutions of higher education that participate in state student financial aid programs must have policies establishing disciplinary procedures for violations of their student code of

conduct. "Private institutions of higher education" includes private nonprofit and for-profit degree-granting institutions, including institutions that are exempted from state authorization under current law. At a minimum, an institution's policies and procedures must:

- address whether, and to what extent, a student may be represented by counsel or be accompanied by an advocate in various stages of disciplinary proceedings;
- provide clear time frames under which the institution will conduct proceedings and issue its findings or decisions;
- address the standards and burdens of proof required at each level of its disciplinary proceedings;
- establish who the decision maker is at each level of the disciplinary proceedings, including at the initial proceeding and any appellate proceedings at the institution;
- provide clear notices of any appeal and reconsideration processes available to the student; and
- address how long records of disciplinary actions will be retained and under what circumstances disciplinary actions become part of a student's permanent academic record.

An institution's policy must provide that any ambiguities in the policies and procedures will be resolved in favor of the student, and institutions must interpret their policies and procedures liberally in favor of the student. The policies and procedures must be made available to students in writing and on the institution's web site, and the institution must notify students when there is a change to its policies or procedures regarding disciplinary proceedings for violations of the student code of conduct.

Beginning August 1, 2018, private institutions of higher education must submit to the Council a summary report of its disciplinary proceedings resulting in a student suspension or expulsion or in the institution refusing to grant a degree or certification. This report must provide information on the types of violations and the demographics of the disciplined student, but may not contain a student's personally identifying information. The Council may adopt rules implementing this process.

The Council may investigate a private institution of higher education's noncompliance. The Council may sanction an institution that fails to comply with its own policies and procedures regarding disciplinary proceedings for student code of conduct violations. Sanctions include requiring the institution to establish additional disciplinary procedures and placing the institution on probationary status or eventual suspended status for participation in the state financial aid programs. The Council may adopt rules implementing investigations and discipline.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.