

118TH CONGRESS
1ST SESSION

S. 2163

To direct the Secretary of Education to study student mental health at institutions of higher education and to issue guidance on compliance with the Americans with Disabilities Act of 1990 for mental health and substance use disorder policies of institutions of higher education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To direct the Secretary of Education to study student mental health at institutions of higher education and to issue guidance on compliance with the Americans with Disabilities Act of 1990 for mental health and substance use disorder policies of institutions of higher education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Mental Health
5 Rights Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Nearly all institutions of higher education
4 are subject to—

5 (A) the Americans with Disabilities Act of
6 1990 (42 U.S.C. 12101 et seq.);

7 (B) section 504 of the Rehabilitation Act
8 of 1973 (29 U.S.C. 794); or

9 (C) the Fair Housing Act (42 U.S.C. 3601
10 et seq.).

11 (2) The laws described in paragraph (1) pro-
12 hibit discrimination on the basis of disability, de-
13 fined as “with respect to an individual, a physical or
14 mental impairment that substantially limits one or
15 more major life activities of such individual, a record
16 of such an impairment, or being regarded as having
17 such an impairment” under section 3(1) of the
18 Americans with Disabilities Act of 1990 (42 U.S.C.
19 12102(1)).

20 (3) Under section 2(a)(3) of the Americans
21 with Disabilities Act of 1990 (42 U.S.C.
22 12101(a)(3)), Congress found that “discrimination
23 against individuals with disabilities persists in such
24 critical areas as employment, housing, public accom-
25 modations, education, transportation, communica-

1 tion, recreation, institutionalization, health services,
2 voting, and access to public services”.

3 (4) The laws described in paragraph (1) pro-
4 hibit institutions of higher education from discrimi-
5 nating against students with disabilities, including
6 by failing to provide reasonable accommodations or
7 reasonable modifications to such students so that
8 such students are able to fully participate in postsec-
9 ondary life.

10 (5) The laws described in paragraph (1) pro-
11 hibit institutions of higher education from discrimi-
12 nating against students with mental health disabil-
13 ities, including by failing to provide reasonable ac-
14 commodations or reasonable modifications to such a
15 student.

16 (6) The vast majority of institutions of higher
17 education lack a comprehensive plan for addressing
18 and preventing discrimination against students with
19 mental health disabilities or who are experiencing
20 crises, in many cases—

21 (A) requiring such students to leave the in-
22 stitution of higher education;

23 (B) evicting such students from on-campus
24 housing; and

1 (C) establishing excessive and unnecessary
2 impediments to the re-enrollment of such stu-
3 dents to the institution of higher education.

4 **SEC. 3. STUDY AND REPORT.**

5 (a) VOLUNTARY REPORTING.—Not later than 120
6 days after the date of the enactment of this Act, the Sec-
7 retary shall solicit from students at institutions of higher
8 education, on a voluntary basis and in a manner that pro-
9 tects the confidentiality of such students, information with
10 respect to mental health disabilities and substance use dis-
11 orders at such institutions of higher education.

12 (b) STUDY AND REPORT.—Not later than 1 year
13 after the date of the enactment of this Act, the Secretary
14 shall—

15 (1) complete a study on mental health disabil-
16 ities and substance use disorders at institutions of
17 higher education, including—

18 (A) using the information voluntarily re-
19 ported by students under subsection (a), the
20 prevalence of such disabilities and disorders,
21 disaggregated by type of disability or disorder
22 (including disabilities and disorders related to
23 hearing, vision, cognition, ambulatory, self-care,
24 independent living, mental health, and any
25 other category determined appropriate by the

1 Secretary), among students at institutions of
2 higher education and policies to support stu-
3 dents with respect to such disabilities and dis-
4 orders;

5 (B) the policies of institutions of higher
6 education with respect to students who, due to
7 such a condition, are considering a voluntary
8 leave of absence or are required to take a man-
9 datory or involuntary leave of absence, or re-
10 turn from such an absence, and compliance by
11 institutions of higher education with such poli-
12 cies; and

13 (C) best practices for supporting students
14 at institutions of higher education in managing
15 such disabilities and disorders, including the ef-
16 fect such practices have on graduation rates
17 and degree completion; and

18 (2) submit to the Committee on Education and
19 the Workforce of the House of Representatives and
20 the Committee on Health, Education, Labor, and
21 Pensions of the Senate a report on the findings of
22 the study completed under paragraph (1).

23 **SEC. 4. GUIDANCE.**

24 Not later than 180 days after the date on which the
25 report is submitted under section 3(b), the Secretary shall,

1 in consultation with the Assistant Attorney General of the
2 Civil Rights Division of the Department of Justice, issue
3 guidance on—

4 (1) the compliance of institutions of higher edu-
5 cation with the Americans with Disabilities Act of
6 1990 (42 U.S.C. 12101 et seq.) and section 504 of
7 the Rehabilitation Act of 1973 (29 U.S.C. 794) with
8 respect to students with mental health disabilities;

9 (2) the legal obligations of institutions of higher
10 education with respect to accommodating students
11 with mental health disabilities and students with
12 substance use disorders; and

13 (3) policies of institutions of higher education
14 which may have a discriminatory impact on students
15 with mental health disabilities and students with
16 substance use disorders.

17 **SEC. 5. DEFINITIONS.**

18 In this Act:

19 (1) INSTITUTION OF HIGHER EDUCATION.—The
20 term “institution of higher education” has the
21 meaning given that term in section 101(a) of the
22 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

23 (2) SECRETARY.—The term “Secretary” means
24 the Secretary of Education.

○