

Education Advocacy Coalition

for Students with Disabilities

SENATE FINANCE COMMITTEE

SENATE BILL 910

Governor's Workforce Development Board-

Study on Diploma and Degree Employment Discrimination

March 13, 2024

POSITION: SUPPORT

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Over the years, DRM has dedicated significant resources to representation of children and youth with disabilities in special education matters, both individual and systemic, and to educational policy work. In part, this work has focused on advocating for youth with disabilities who are transitioning out of the school system and moving on to higher education, employment, or community programs. DRM supports Senate Bill 910, which would require, generally, a study on diploma and degree employment discrimination.

According to the U.S. Bureau of Labor Statistics, in 2023, people with a disability were less likely to have completed a bachelor's degree or higher than those with no disability and, across all levels of education, people with a disability were much less likely to be employed than their counterparts with no disability.¹ The unemployment rate, defined as "those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey" was twice as high for individuals with disabilities as those without, 7.2% compared to 3.5% respectively.

As the Supreme Court pointed out in 1971, "History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress has mandated the commonsense proposition that they are not to become masters of reality." *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

With regards to individuals with disabilities, the Americans with Disabilities Act (ADA), passed in 1990, specifically states that discrimination includes "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria . . . is shown to be job-related for the position in question and is consistent with business necessity." 42 U.S.C. § 12112(b)(6).

¹ <https://www.bls.gov/news.release/pdf/disabl.pdf>

Since then, the U.S. Equal Employment Opportunity Commission (EEOC) has repeatedly asserted² that applying a high school diploma requirement is unlawful under Title VII of the Civil Rights Act of 1964 (Title VII) where it has a disparate impact on the basis of race, national origin, color, sex, or religion and under the Americans with Disabilities Act of 1990 (ADA) if it screens out or tends to screen out an individual with a disability or a class of individuals with disabilities, unless the employer can demonstrate that the requirement is job related for the position in question and consistent with business necessity. In the case of individuals with disabilities, the EEOC stated further that

... even if an employer can demonstrate that a high school diploma requirement is job related and consistent with business necessity, some individuals who cannot meet the requirement because of a disability may be entitled to demonstrate their ability to perform the essential functions of the job by alternative means, as a reasonable accommodation

See EEOC Informal Discussion Letter: ADA& Title VII: High School Diploma Requirement and Disparate Impact (June 11, 2012) <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-241>.

Job seekers, including job seekers with disabilities, should not face discrimination in hiring based upon their lack of a high school diploma or degree from an institution of higher education. For these reasons, DRM fully supports Senate Bill 910's purpose of undertaking a study on diploma and degree employment discrimination.

For more information or if questions, please contact Megan Jones at meganc@disabilityrightsmd.org .

Respectfully submitted,

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² See Employment Rights of Immigrants Under Federal Anti-Discrimination Laws, https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/publications/immigrants-facts.pdf; ADA: Qualification Standards; Disparate Impact (Nov. 17, 2011), http://www.eeoc.gov/eeoc/foia/letters/2011/ada_qualification_standards.html; Questions and Answers about the EEOC and High School Diploma Requirements, http://www.eeoc.gov/eeoc/newsroom/wysk_high_school_ada.cfm

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