

## **Vote Yes on Senate Bill SB: 993**

**Bill Title: County Boards and Public and Nonpublic Prekindergarten Programs and Schools – Discrimination – Prohibition**

**Hearing Date: February 20, 2020 at 12:00 p.m.**

**Chair: William C. Smith Jr., Vice Chair: Jeff Waldstreicher**

I come before you today to ask for a favorable report on SB993/HB1204, the Inclusive Schools Act. This is the third year that I have introduced legislation seeking to protect all students from discriminatory practices. The bill before you today is different from the bills you have heard in prior years. It takes into account the concerns that have been raised by the Commission on Civil Rights, representatives of our nonpublic schools, advocates from Free State Justice, and the case currently making its way through Federal court involving Bethel Ministries and Maryland’s Department of Education and BOOST Board.

The Inclusive Schools Act does three main things:

1) It establishes prohibitions in all public and nonpublic schools that receive state funding that protect against discriminatory actions toward “any person because of the individual’s race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability.”

2) It requires these schools to have written policies that prohibit discrimination;  
and

3) It creates an administrative complaint and remedy process within the Maryland Department of Education (MSDE) by which a student or family member may file a complaint of discrimination and request that MSDE provide a remedy to alleviate the discrimination.

Previous iterations of this legislation have attempted to address concerns about discriminatory practices in nonpublic schools who were receiving state funding, such as

the schools who participate in the BOOST voucher program. This committee is familiar with the student handbook controversy that was discovered a couple of years ago, prompting MSDE to evaluate all of the handbooks from schools participating in the BOOST program. This ultimately led to the BOOST Board ruling that eleven schools had discriminatory provisions in their handbooks, which were in direct violation of the assurances with which they were required to agree to as a condition of their participation in the program. This ruling led to a number of schools being deemed ineligible to continue participating in the program. The Inclusive Schools Act prohibits all schools from discriminating against students and families. But instead of a complaint process that is driven through the Commission on Civil Rights and the courts, the remedy in this bill is administrative, going through MSDE; the entity that oversees the BOOST and Textbook and Technology programs, and will oversee the universal pre-K program under the Blueprint legislation.

While this discussion about discrimination began with a conversation about nonpublic schools, we have also heard concerns expressed every year about discrimination in our public schools. As the Maryland Commission on Civil Rights noted, there are no clear antidiscrimination protections covering sexual orientation or gender identity in Maryland's public schools. This is because we rely on federal antidiscrimination laws, which do not currently include protections for sexual orientation or gender identity. This is not to say that MSDE does not recognize the importance of these protections. In fact, MSDE has issued guidance for all public schools to follow, clearly stating:

*“The Maryland State Department of Education does not discriminate on the basis of age, ancestry/national origin, color, disability, gender identity/expression, marital status, race, religion, sex, or sexual orientation in matters affecting employment or in providing access to programs and activities and provides equal access to the Boy Scouts and other designated youth groups.”*

In addition, MSDE has written extensive guidance for schools and school boards to follow for transgender and gender nonconforming students. However, as you will hear from members of our panels, guidance does not offer the same level of protection that codified antidiscrimination policy does.

There are numerous stories from parents and students both in public schools and non-public schools who have experienced discrimination. Under current law, many of those students are left with no recourse to remedy the discrimination. In cases where they are covered by federal law, their only recourse is to find an attorney and file a lawsuit

claiming a violation of their Civil and Constitutional rights. The Inclusive Schools Act creates an accessible process by which students and/or their parents can file a complaint with MSDE; MSDE will determine if a discriminatory act has actually occurred; and then MSDE can work with the student and the school/school board to mediate and find a mutually agreeable remedy. If the parties can't agree, MSDE has the authority to issue a "finding of fact" and order relief from the discriminatory act. If there is still disagreement with MSDE's findings, both parties have the option to file an appeal with the Office of Administrative Hearings. Because the legislation also requires schools/school boards to have written antidiscrimination policies, it is our hope that very few complaints ever reach the point where MSDE is required to intervene. Written policies provide clear guidelines for administrators, educators and support staff and can create school level and county level complaint and remedy processes for students and families to access prior to filing a complaint with MSDE.

The goal of this legislation is to ensure equal protection and fair treatment for all students, and to provide guidance and support for our public schools and qualifying nonpublic schools. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "Cory V. McCray". The signature is fluid and cursive, with a large initial "C" and a long horizontal stroke.

Cory V. McCray  
State Senator