

BILL: House Bill 1322
TITLE: Primary and Secondary Education - School Personnel - Prohibition on Retaliation for Not Returning to In-Person Instruction and Work
DATE: March 30, 2021
POSITION: OPPOSE
COMMITTEE: Education, Health, and Environmental Affairs
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 1322 because, contrary to the elaborate provisions of the bill, local boards do not believe that any changes in the laws governing school personnel employment rights or responsibilities are needed or necessitated by the COVID-19 pandemic.

MABE opposes House Bill 1322 because it would impose a new set of conditions and limitations on the ability of school systems to discipline employees who claim that such disciplinary action is being taken in retaliation for their refusal to return to the school building in order to conduct in-person instruction based on one or more of the age, health, household, and vaccination criteria set forth in this bill. Specifically, the bill would prohibit any disciplinary actions with employees based on their not having received a complete vaccination, without any provisions referencing their opportunity to receive a complete vaccination before returning to in-person instruction or referencing the employee's responsibility to provide their rationale for choosing not to receive a vaccination.

Under Md. Code Ann., Ed. Art. § 6-202(a), the local board of education may suspend without pay or terminate a certificated employee only for immorality, misconduct in office, insubordination, willful neglect of duty, or incompetency. To the extent that a school employee refuses to satisfy conditions of employment within the negotiated agreement and in compliance with State and federal laws, regulations, and guidance, they may be subject to discipline under one or more of these just causes.

The dismissal or suspension without pay of a certificated employee under Md. Code Ann., Ed. Art. § 6-202(a) is such that certificated employees have a great deal of due process under the Fourteenth Amendment to the United States Constitution. And the General Assembly very recently expanded employee rights to respond to a superintendent's recommendation for discipline or dismissal. As a result of legislation enacted during the 2018 session of the Maryland General Assembly, Md. Code Ann., Ed. Art. § 6-202(a) was amended to allow certificated employees who have been recommended for termination or suspension without pay to choose whether they wish to follow either the administrative appeal route or a binding arbitration route.

Again, employee rights for Maryland's school employees are already among the most extensive in the nation, and the additional protections contained in this bill would serve to hamper the smooth operation of reopening schools for in-person instruction before the close of the 2020-2021 school year.

For these reasons, MABE requests an unfavorable report on House Bill 1322.