



MARYLAND
STUDENT
COALITION

UPDATED
ANALYSIS
OF HB 753

March 2021

Updated
Analysis of:
House Bill 753

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Contents

Contents	1
Introduction:	2
Key Points	2
Analysis:	3
Recommendations:	8

KEY:

Italics represent bill language.

Bold and “[]” represent bill amendments

Introduction:

House Bill 753 seeks to establish protections for students' rights to peacefully demonstrate in school. This initiative has been spearheaded by a coalition of students from across the state of Maryland, representing over fifteen different counties with more representatives being added weekly. Named the Maryland Student Coalition, the group consists of student leaders, education advocates, activists, organizers, and several student members of Maryland Boards of Education. House Bill 753 represents the opinion of a vast number of students in the state of Maryland, and dozens of students and student organizations have advocated on its behalf. The Bill has been endorsed by several county and state elected officials, and was introduced by Delegate Eric Ebersole of District 12 on January 29, 2021. The bill has since passed in the Maryland House of Delegates with several amendments.

To track the progress of the bill, follow this link:

<https://mgaleg.maryland.gov/mgawebbsite/Legislation/Details/hb0753?ys=2021RS>

Key Points

The language of the bill serves to accomplish the following objectives:

- 1) Outline clear protections for students' right to demonstrate
- 2) Establish consistency amongst local school systems in regards to demonstration policies
- 3) Provide school systems clear abilities to manage demonstrations that occur under their jurisdiction

Analysis:

When organizing this initiative, the Coalition organizers learned about the many inconsistencies across different schools and school systems regarding student demonstration policies. Depending on the school administrator, there could be vast discrepancies in the procedures and permissibility to organize demonstrations, and the punishment for participating in a demonstration. The goal of this legislation is to protect students' First Amendment right to exercise free speech and assembly, and to require local jurisdictions to establish procedures for organizing demonstrations to prevent potential inconsistencies within a school system.

FOR the purpose of prohibiting a public school from prohibiting a student from organizing or participating in a student-organized peaceful demonstration or imposing certain limits on a student's right to free speech during a certain demonstration, subject to certain limitations; authorizing a public school to impose certain limitations on a student-organized peaceful demonstration under certain circumstances; prohibiting a public school from disciplining a student for engaging in a student-organized peaceful demonstration under certain circumstances; prohibiting a school from imposing a disciplinary action on a certain student that is greater than the consequence for an unlawfully absent student under certain circumstances; requiring each county board of education to develop a certain written policy; providing for the application of this Act; defining a certain term; and generally relating to student-organized peaceful demonstrations and student discipline.

The above statement is a formal outline of the purpose of the bill.

Analysis of HB753

(A) (1) *In This Section, “Student–organized Peaceful Demonstration” means a nonviolent demonstration intended to express the viewpoint of a student.*

(2) *“Student–organized Peaceful Demonstration” does not include a demonstration that incites a student to:*

(i) ~~€[c]reate~~ a clear and present danger to the health, safety, or welfare of the school community; or

~~(ii) Commit an unlawful or dangerous act.~~

The above subsection of the bill defines what a demonstration is and outlines what can restrict a student-led demonstration. Students’ right to demonstrate is an essential aspect of their engagement in civics and participation in democracy. This right must be ensured and protected as long as it does not create a hostile or dangerous situation. This section also notes that a demonstration does not have to be education or school related, as long as it conveys a particular viewpoint. This is important because it is essential that students can express themselves on political topics and matters of current events that may not necessarily be directly relevant to education. The Ways and Means Committee of the House of Delegates amended this section of the bill to strike point ‘ii’. The committee felt this addition was redundant, as there is Supreme Court Precedent¹ that already ensures this principle, and that it would add an additional level of interpretation by school administrators that could result in limited student expression.

(B) *This section applies to a student–organized peaceful demonstration that occurs:*

(1) on school property;

(2) at a school–sponsored activity or event; or

(3) on a school bus.

¹ Brandenburg v. Ohio, 395 U.S. 444 (1969)

Maryland Student Coalition

The above subsection of the bill outlines where this bill applies. This section is consistent with the acknowledged jurisdiction of school systems.

- (C)** *(1) subject to paragraph (2) of this subsection, a public school may not:*
- (i) prohibit a student from organizing or participating in a student–organized peaceful demonstration; or*
 - (ii) impose limits that substantially inhibit a student’s right to free speech while participating in a student–organized peaceful demonstration.*
- (2) a school may impose reasonable limitations on the time and place of a student–organized peaceful demonstration in order to:*
- (i) protect the health, safety, and welfare of students and school personnel; and*
 - (ii) minimize disruption to the educational environment.*

The above subsection outlines the parameters of when a school system can and can not restrict students from demonstrating. As previously stated, the only reason a demonstration can be limited is when it is a threat to the safety of students it is a disruption to the educational environment.

- (D)** *A public school may not discipline a student for organizing or participating in a student–organized peaceful demonstration if:*
- (1) The school administration is notified of a student’s intent to engage in a student–organized peaceful demonstration ~~at least 48 hours~~ **[within a reasonable amount of time]** in advance of the demonstration; and*
 - (2) The student complies with the written policy established under subsection (f) of this section.*

Analysis of HB753

The above subsection of the bill establishes the state requirement for reasonable notice. This notice must be provided to the school in order for them to take measures to minimize disruption and ensure the safety of students and staff. This policy overrides any existing notice period that exists within current school system policy. Additionally, this section requires students to abide by the local jurisdiction's policy that they establish. This section of the policy was amended by the Ways and Means Committee, as there were concerns that having a time frame could add an unconstitutional restriction on students' abilities to demonstrate in school. This amendment could potentially have the inverse effect in implementation. Due to there being no set "reasonable time", a school system would be left to interpret what they deem 'reasonable'. The Maryland Student Coalition is in favor of the intent of this amendment, and ask that additional protections for students' rights be implemented.

(E) If a student does not comply with the requirements of subsection (d) of this section, a school may not impose a disciplinary action on the student that is greater than the consequence for an unlawfully absent student.

The above subsection protects students' rights to spontaneously demonstrate. If a student does not notify the administration forty-eight hours in advance and/or does not abide by the additional requirements of the local jurisdiction's policy, they may not be disciplined to an extent that is larger than the consequence of someone who is unlawfully absent. This also allows students to organize demonstrations without fear that an error in planning could lead to severe punishment.

(F) (1) each county board shall develop a written policy regarding student-organized peaceful demonstrations.

(2) the policy developed under paragraph (1) of this subsection:

(i) shall include guidelines for the:

Maryland Student Coalition

1. time and place of a student–organized peaceful demonstration; and

2. manner of expression by a student participating in a student–organized peaceful demonstration;

(ii) shall define what constitutes:

1. reasonable requirements limiting the time and place of a student–organized peaceful demonstration; and

2. reasonable guidelines for the time, place, and manner of expression by a student engaging in a student–organized peaceful demonstration; and

(iii) notwithstanding the provisions of subsections (c) and (d) of this section, may include limitations on language that has the intent to harass, threaten, or intimidate other people.

The above subsection of the bill establishes the requirement for local jurisdiction to create policies and procedures around student demonstrations. This section ensures equal implementation of policy across a school system, limiting the potential of inconsistent enforcement between schools. This section also grants local jurisdictions the ability to create their own definition of “reasonable requirements” and “reasonable guidelines” as long as it does not contradict any aspect of the bill.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

Finally, if passed, the bill will take effect on the first of July, 2021.

Recommendations:

The Coalition to Reform School Discipline² (CRSD), advocated³ for additional amendments, that would expand student rights and clarify some language, that were not added by the House of Delegates. The Maryland Student Coalition concurs with the opinions of the CRSD and advocates for these changes in the Senate or in the local implementation of the legislation, should it be enacted.

7-312 (c) (II) (II) Impose limits that [substantially] inhibit a student's right to free speech while participating in a student–organized peaceful demonstration.

The amendment added in the section above is a technical language change that would clarify that a school may not limit a demonstration in a way that would “substantially” limit a student's ability to exercise their right to free speech. Although this change is minor, we feel it is important to be precise in the protections against potential limitations of student expression.

7-312 (d) (1) [2. manner of expression by a student participating in a student–organized peaceful demonstration;]

The amendment added above would specifically protect the “manner of expression” from being limited by a school administration. This amendment is an essential aspect of the bill, and is necessary to reflect the intended purpose of this legislation. Although it is implied within concurring language that the manner of expression may not be limited, it is not blatantly codified. The Maryland Student Coalition heavily advocates in favor of this amendment.

² **CRSD Member Organizations:** ACLU of Maryland; The Arc, Maryland; Attendance Works; BMore Awesome, Inc.; The Choice Program at UMBC; Community Law in Action; Disability Rights Maryland; Family League of Baltimore; NARAL-Pro-Choice Maryland; Maryland Office of the Public Defender; Open Society Institute – Baltimore; Project HEAL at Kennedy Krieger Institute; Public Justice Center; Restorative Counseling Services; Schools Not Jails; Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law; End Racism FCPS; MDPTA; and Strong Schools Maryland.

³ https://mgaleg.maryland.gov/cmte_testimony/2021/wam/1ID9-Zf5T-8iO_zQZZsdrmv4Wm5PufiWi.pdf