



MONTGOMERY COUNTY BOARD OF EDUCATION

Expanding Opportunity and Unleashing Potential

850 Hungerford Drive ♦ Room 123 ♦ Rockville, Maryland 20850

BILL: HB0753
TITLE: Education - Student-Organized Peaceful Demonstrations - Student Discipline and Policy
DATE: 4/1/2021
POSITION: SUPPORT WITH AMENDMENT
COMMITTEE: Ways and Means
CROSSOVER: Education, Health, and Environmental Affairs
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The Montgomery County Board of Education (Board) **Support** HB0753 **with amendments**.

While the proposed HB0753 has many of needed elements itemized below, they present many problems with interpretation and implementation as currently written. The Board only supports with substantial revisions.

The requirement that a public school system have a policy is not problematic, as MCPS already has Board Policy, JFA, *Student Rights and Responsibilities*, and MCPS Regulation JFA-RA, *Student Rights and Responsibilities*. MCPS Regulation JFA-RA sets forth provisions regarding student speech and assembly in Regulation JFA-RA, section IV. Student rights to assemble are likewise recognized and supported by MCPS, under circumstances set forth in Regulation JFA-RA.

Section IV.F of MCPS Regulation JFA-RA sets forth rights and responsibilities regarding student speech, that contain key elements which should be included in this bill, in alignment with MCPS requirements regarding the performance of a student production or the distribution of a publication or other information material, about which a principal may exercise prior restraint, halt or reject based on the following criteria, if:

- It is obscene, libelous, slanderous, profane, vulgar, lewd, or contains language that has the intent to harass, threaten, or intimidate.
- It constitutes an unwarranted invasion of privacy.
- It incites students to create a clear and present danger of:
 - the commission of an unlawful act, the violation of Board policies and/or MCPS regulations or rules; or the material and substantial disruption of the orderly operation of the public school. “Substantial disruption” means either interference with school or disorderly conduct by a significant number of students, including rioting, school boycotts, sit-ins, destroying property, and walkouts.
- It violates state or federal law.

HB0753 Page 1 Line 25: the term “student-organized peaceful demonstration” contains subjective terminology, specifically what constitutes “peaceful” and “demonstration”. The legally recognized terms “speech” and “assembly” should be used instead with clear criteria for grounds on which a school may prohibit or discipline students for certain speech or assembly.

HB0753 Page 2 Lines 3-7 are insufficient and should be amended to include the following criteria as to what constitutes “welfare” of the school community. Again, this is highly subjective language. “Substantial disruption” is clearer, in line with case law:

“Substantial disruption” is defined in MCPS regulation to mean “either interference with school or disorderly conduct by a significant number of students, including rioting, school boycotts, sit-ins, destroying property, and walkouts.

Because the term “welfare of the community” is problematic and insufficiently defined, “speech” is better, and schools should have the ability to prohibit such speech and discipline students if such speech—

- violates state or federal law; and
- is obscene, libelous, slanderous, profane, vulgar, lewd, or contains language that has the intent to harass, threaten, or intimidate otherwise causes or could be reasonably expected to cause substantial disruption to the operation of the school.

PLEASE NOTE: The Montgomery County Board has distributed for public comment amendments to Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. that prohibits “the use of language and or the display of images and symbols which promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. [This would be interpreted to include the display of items reference in HB0418 at an assemblage of students or student clothing with certain symbols.]

MCPS Regulation JFA-RA, *Student Rights and Responsibilities*, section IV.G sets forth students’ right to assemble for discussion of issues of importance to them and to demonstrate.

HB0753 Page 2 lines 20-21 are problematic because they restrict a school from prohibiting organizing or participating in a “peaceful demonstration” [again, problematic and subjective] without acknowledging the potential for such activities to take place during class. “Minimizing” disruption to class does not go far enough.

HB0753 Page 2 lines 26-27 restrict discipline for organizing, but the time, place, and manner allowance for such discipline are insufficient.

For these reasons, the Board **supports** this legislation **with amendments** and urges a favorable report.