



**Testimony for the House Ways and Means Committee
January 20, 2021**

**HB 394 Public Schools - Fees for Summer School Courses –
Prohibition**

FAVORABLE

The American Civil Liberties Union of Maryland and the Howard University School of Law Human and Civil Rights Clinic urge a favorable report on HB 394, which would prohibit Maryland local school districts from charging fees to students seeking to enroll in required summer school courses, a practice especially harmful to indigent students. HB 394 will bring local school district policies into compliance with federal, as well as Maryland law, and help end the cycle of poverty perpetuated by lack of educational access.

Over half of the local school districts within the state of Maryland charge fees, ranging upwards of \$500 per credit, for their summer course offerings. And while at least four districts offer courses free of charge to certain low-income students, the majority do not waive the full cost of enrollment for even the neediest students. These policies severely harm students whose family's income makes them eligible for Free and Reduced-Price School Meal plans. Unable to afford summer school and earn credits necessary for high school graduation, these students have no choice but to repeat the grade level they were in the previous year. In short, summer school enrollment fees guarantee that indigent students in the state of Maryland are discriminated against solely because of their family's income.

In Maryland, students from Prince George's County filed a lawsuit this past summer against the Prince George's County School Board challenging the summer school fees. These fees are a stonewall for educational progress that only apply to students who do not have the financial means. Two of the students were being barred from graduating high school, thus setting them back from pursuing higher education or entering the work force – opportunities that would help alleviate the financial burden of their families in the long-run.



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These policies violate the Maryland Constitution. Article VIII, Section 1 of the Constitution explicitly mandates that the public-school system be “free.” This requires schools to “be open to all without expense.” *Clark v. Maryland Institute*, 87 Md. 126, 129 (1898). The requirement extends to summer school. Anything directly related to a school’s curriculum must be available to all without charge. 72 Op. Att’y Gen. 262, 267 (1987). Not surprisingly, the only court to consider a similar requirement concluded it was illegal. *Giannini Council on Elementary and Secondary Education*, No. PC 2014-5240, Providence Co. Super. Ct., (March 30, 2016) (determining that because the purpose of summer school is to provide additional instruction to students recovering credits for core courses, fees cannot be charged for them).

These policies also raise serious concern under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by any program that receives federal financial assistance. Federal rules promulgated pursuant to Title VI prohibit policies which have a disparate racial impact or “have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.” 34 C.F.R. § 100.3(b)(2). Although specific data related to students in need of summer school education is unavailable, it seems likely that these policies have an outsized negative impact on African-American students. Almost 15 percent of African-Americans in Maryland live in poverty, the highest percentage among any racial group and twice the percentage of whites who face poverty. U.S. Census Bureau, *American Community Survey* (2015).

In addition to being illegal, charging students to attend required summer school courses is morally repugnant. Core courses, such as Mathematics and English, should be free of charge, particularly because of the long-lasting negative impact on students unable to afford them. Without these required courses, students are unable to advance to the next grade level and are ultimately unable to receive their diplomas. Justice Thurgood Marshall noted the importance of equality of educational opportunities. Without education, children are deprived during their earliest years of the chance to reach their full potential as citizens. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411



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U.S. 1, 71 (1973). These policies, by denying indigent students the opportunity to enroll in summer school, directly deny students equal access to education, further contributing to the cycle of poverty. Helen F. Ladd, Education and Poverty: Confronting the Evidence, 31 *Journal of Policy Analysis and Management*, 203–227 n.2 (2012).

For the foregoing reasons, the American Civil Liberties Union of Maryland and the Howard University School of Law Human and Civil Rights Clinic urge a favorable report on HB 394.