

HB468X_MSEA_Owusu_FAV.pdf

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Position: FAV

**Testimony in Support of House Bill 468
Public School Employees – Whistleblower Protections – Civil Actions**

**Senate Education, Health, and Environmental Affairs
March 29, 2022**

**Pokuaa Owusu-Acheaw
Government Relations**

The Maryland State Education Association supports House Bill 468, legislation that would clarify the expectations of any school employee who has filed a whistleblower complaint provided for under a law adopted by Maryland in 2017.

MSEA represents 76,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

Whistleblower laws and protections are necessary components for good government. Employees should not feel that they may be jeopardizing their careers in reporting the truth about workplace wrongdoings. Educators should never have to choose between protecting the integrity of the workplace and students versus their own job security; but without whistleblower protections that might very well be the decision they are forced to make out of fear of retaliation. Maryland adopted whistleblower protection for school employees in 2017, however the provision included language that empowers local boards of education to delay consideration and action by requiring employees to "exhaust any administrative remedies before instituting a civil action." This language is overly broad and should be removed from the statute.

In other states with such legal protections, educators have blown the whistle on such things as cheating on standardized tests, rigged procurement schemes, being encouraged to lie on forms regarding class size, fixing grades, and improper



supervision for students with IEP needs. To feel confident that Maryland educators will blow the whistle in similar instances, we must remove or limit this broad administrative power.

For those reasons, MSEA urges a favorable report on House Bill 468.

HB468 Whistleblower 3.29.22.pdf

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HB468 PUBLIC SCHOOL EMPLOYEES – WHISTLEBLOWER PROTECTIONS – CIVIL ACTIONS

March 29, 2022

EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

OPPOSE

Jeanette Ortiz, Esq., Legislative & Policy Counsel (410.703.5352)

Anne Arundel County Public Schools (AACPS) opposes **HB468 Public School Employees – Whistleblower Protections – Civil Actions**. This bill repeals the prerequisite that a public school employee who is engaging in whistleblowing, as specified, exhaust any administrative remedies before instituting a civil action. However, under the bill, a public school employee who is subject to a personnel action due to whistleblowing must notify the local superintendent of schools in writing of the employee's intention to institute a civil action. In addition, the bill establishes an administrative complaint and remediation process for public school employees engaged in whistleblowing who have been subject to personnel action.

AACPS supports the rights of employees to take actions to report unlawful behavior. AACPS takes allegations of fraud seriously and has made efforts to provide employees with the support they need to report unlawful behavior. AACPS employees currently have the option of reporting issues such as those covered in this bill to their supervisors or to a hotline. If an employee does not feel comfortable reporting such information to a supervisor or member of management, the employee has the option to directly and anonymously report such information to the AACPS Financial Fraud, Waste, or Abuse Hotline. The hotline is available 24 hours a day, 7 days a week. However, we have concerns that this legislation would fully repeal the requirement that an employee exhaust administrative remedies before seeking civil action.

This repeal will result in increased litigation, and AACPS would likely be required to hire additional staff to take on the increased workload that is inevitable under this bill. In addition, AACPS would be required to hire counsel to pay additional legal fees for counsel to handle the increased litigation which is also inevitable under this bill. Accordingly, this legislation would result in an unfunded mandate, which AACPS opposes.

When the Whistleblower Protection Act was introduced in 2017, AACPS supported this provision which reasonably requires employees to utilize the available administrative procedures before filing a complaint in court. This provision helps ensure a balanced approach to facilitating employee disclosures and prompt school system responses to any alleged unlawful activities. Removing this provision from the existing law to exhaust administrative avenues would, unfortunately, lead to a much more adversarial process and more litigation.

Accordingly, AACPS respectfully requests an **UNFAVORABLE** committee report on HB468.

HB 468. Whistleblower protection lawsuits without a

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BILL: House Bill 468
TITLE: Public School Employees – Whistleblower Protection – Civil Actions
DATE: March 29, 2022
POSITION: OPPOSE
COMMITTEE: Education, Health, and Environmental Affairs
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 468.

This bill would amend the Whistleblower Protection Act for Maryland’s school employees by repealing what local school systems believe to be a very reasonable requirement that an employee must utilize the adopted administrative complaint procedures before instituting civil action in court.

MABE opposes this bill because it would effectively eliminate the employee’s responsibility to work through the school system’s administrative procedures. The bill would set a 30-day deadline on the school system’s final decision and lengthen the time allotted for the employee to sue, from 6 months to 9 months. These provisions, unrealistically shortening the amount of time the employer has to process and respond to the complaint, and lengthening the time the employee has to prepare for litigation, will foreseeably lead to more complaints and fewer of these cases being resolved without costly litigation.

To be clear, MABE supports the rights of employees to take actions to report unlawful behavior. Since 2017, Maryland has had a stand-alone Whistleblower Protection Act for public school employees. In 2017, MABE stressed the fact that public school employees already enjoy a very high standard of due process protections under Maryland law; and that these protections afford many assurances of transparent complaint and dispute resolution processes for employees who believe they have been retaliated against. In addition, school systems already recognize the value of facilitating the reporting of fraud and abuse within the school system through hotlines, ombudsmen, and other resources.

When the Whistleblower Protection Act was passing in 2017, MABE supported the provision that reasonably requires employees to utilize the available administrative procedures before filing a complaint in court. This provision helps ensure a balanced approach to facilitating employee disclosures and prompt school system responses to any alleged unlawful activities.

Again, MABE supports the rights of employees to take action to report unlawful behavior and opposes school system retaliation against employees for doing so. Unfortunately, by removing the requirement to utilize administrative avenues, this bill would foreseeably lead to a much more adversarial process and more litigation. MABE does not believe that this approach is the best course of action for either the employee or school system, and it certainly shouldn’t be the only course of action practically provided under the law. If this legislation were to become law, MABE believes that restoring the requirement to exhaust administrative remedies would align with the bill’s other provisions.

For these reasons, MABE requests an unfavorable report on House Bill 468.