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**SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE  
TESTIMONY OF DISABILITY RIGHTS MARYLAND**

**HOUSE BILL 146 – Education- Reportable Offenses and Student Discipline-  
Alterations**

March 29, 2022

**Position: Support with Amendments**

Disability Rights Maryland (DRM), a non-profit legal advocacy organization, is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. We have been serving children, youth, and adults with disabilities in our state for over 40 years. DRM is a leader in Maryland's educational advocacy community, working on issues such as school discipline, restraint and seclusion, juvenile justice, and enforcing the rights of students with disabilities. DRM has significant experience representing students with disabilities statewide who have been suspended or expelled from school, have been removed from school pursuant to a reportable offense, or are involved in the juvenile justice system.

**HB 146 is a critically important bill that takes an important step forward in ending the school-to-prison pipeline in Maryland.** It provides students who are removed and excluded from school for reportable offenses with due process protections and rights that align with current state discipline law and federal and state special education law, ensures a student's counsel is included in the process for removal from school, and requires data collection on school systems' use of reportable offenses. Although there are other parts of the current reportable offense law that require further reform, the House did not move forward with these reforms. We hope to be back next year to advocate for the full set of reforms outlined in the original bill, however we are still encouraged by and fully support HB 146 with amendments.

**Support for the Bill:**

The current reportable offense law is outdated and out-of-line with Maryland law aimed at reducing reliance on exclusionary discipline. Under the current reportable offense law, school districts routinely and unilaterally remove students from school for indefinite periods of time when students are arrested off school grounds for conduct in the community unrelated to school. When students are subject to these reportable offense removals, they receive very little due process and schools have much more authority to remove them for longer periods of time than they do under current school discipline law for in-school behavior that is directly connected with school. This does not make sense. For behavior that happens off school grounds with no direct connection to school, students should have more protections from being removed from school, not less. **HB 146 fixes this glaring problem by directing school systems to follow existing school discipline procedures for general and special education students if they propose to remove a student from school based on a reportable offense.** This way, students being removed under the reportable offense law have at least the same rights and protections as students removed pursuant

to an in-school disciplinary violation or a school-based arrest.

This is especially important for students with disabilities because under the current reportable offense law, students don't receive legally required protections under federal (Individuals with Disabilities Education Act) and state law. If a student with a disability is to be removed from school for more than ten school days, federal and state special education law requires that school systems convene a Manifestation Determination Review (MDR) meeting to determine whether the student's behavior was caused by or had a direct and substantial relationship to the child's disability. If the behavior was a manifestation of the student's disability, then the removal is terminated and the student returns to their regular education placement. The reason behind this law is to prevent students from being punished for disability-related behavior since the law requires accommodation. **Maryland's current reportable offense law does not provide students removed pursuant to a reportable offense with the legally required MDR. Maryland's current reportable offense law therefore violates the IDEA and is out-of-line with state special education law.** HB 146 fixes this by directing school systems to follow existing school discipline procedures for special education students if they propose to remove a student with a disability from school based on a reportable offense. This only makes sense. If a student is going to be held accountable by school systems for disability-related behavior that happens *off school grounds*, at a minimum those students should be afforded the same rights and protections that students with disabilities receive for in-school disability-related behavior and discipline violations.

**HB 146 also provides students subject to a reportable offense removal with another important protection—it requires that the student's attorney be invited to participate in the removal process, as well as the MDR.** This provision is critical and will help ensure that students who are facing removal from school based on mere allegations (arrest) of a reportable offense will have their rights protected, and will contribute to a more balanced and just system.

Finally, the provision of HB 146 that directs the Maryland State Department of Education to collect data from local school systems on removals of students for reportable offenses, the demographics of the students being removed, and the reasons for removal is imperative for transparency and accountability purposes. Like all forms of exclusionary discipline, it can almost be guaranteed that school systems use the reportable offense law disproportionately with students with disabilities and students of color. **The data requirement will allow lawmakers to monitor how school systems are using the reportable offense law and whether it is being disproportionately used to remove certain groups of students.**

#### **Technical Amendments Proposed:**

As a result of the amendments made to the bill, there are two technical errors that need to be addressed and so we therefore offer two friendly amendments.

1. 7-303 (J)(IV)(V)&(VI) (p. 6, lines 6-12) should be amended to delete the phrase "ADJUDICATED DELINQUENT OR CONVICTED OF" and replace with "ARRESTED FOR." In its original form, HB 146 changed the time of reporting for a reportable offense from "arrest" to the point at which the student is "adjudicated delinquent or convicted of" a reportable offense. However, this amendment was not accepted by the House and thus the

point of reporting in the current law, which is at arrest, still stands. The language in 7-303 (IV)(V)&(VI) needs to be amended accordingly. The provisions should read:

(IV) THE RACE, ETHNICITY, GENDER, AND DISABILITY STATUS OF THE STUDENT ~~ADJUDICATED DELINQUENT OR CONVICTED OF~~ **ARRESTED FOR** THE REPORTABLE OFFENSE;

(V) THE GRADE OF THE STUDENT ~~ADJUDICATED DELINQUENT OR CONVICTED OF~~ **ARRESTED FOR** THE REPORTABLE OFFENSE;

(VI) THE REGULAR SCHOOL PROGRAM OF THE STUDENT ~~ADJUDICATED DELINQUENT OR CONVICTED OF~~ **ARRESTED FOR** THE REPORTABLE OFFENSE;

2. Section 2(b)(1)(iii) (p. 8, lines 11-12), which addresses a certain reporting requirement of each county board, should be amended. Section 2 (b)(1)(iii), which currently requires reporting of “any disciplinary action the school took as a direct result of the reportable offense” should be changed to require reporting of “any removal or exclusion of the student from the student’s regular school program.” This amendment is necessary because schools do not currently classify reportable offense removals as disciplinary action. Reportable offense removals are treated as “outside the disciplinary process” and thus the proposed amendment ensures that the language is broad enough to capture reporting of all removals and exclusions pursuant to a reportable offense. This will ensure the data that the county boards are reporting is accurate. The provision should read:

(iii) any ~~disciplinary action the school took~~ **removal or exclusion of the student from the student’s regular school program** as a direct result of the reportable offense.

For the reasons stated above, Disability Rights Maryland strongly supports HB 146 with amendments.

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