
LEGISLATIVE BRIEF ON:
House Bill 495



Written By:
MSC Board of Directors

MARYLAND STUDENT COALITION

2022 Legislative Session

MARYLAND STUDENT COALITION

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The Maryland Student Coalition (MSC) is an advocacy group comprised of secondary and post secondary school students working together to create and advocate for effective and equitable education policy.

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Table of Contents

Table of Contents	3
Abstract	4
Introduction	5
QUESTIONS	7
Liability	8
Truancy	10
Disruption	12
Hate Speech	13
Why This Concerns The State	14
REFERENCES	16
Special Thanks To	20
Endorsements	21
Example Policy	22
Draft Resolution	25
SUPPORTING DOCUMENTS	27
Major Points	28
Legislative Language	30

Abstract

The story of education in the United States cannot be told without homage to the long history of students invoking their freedom of expression, speech, and assembly through peaceful and impactful demonstrations on school campuses. In the past few years, the amount of youth-led protests and walkouts has increased dramatically in the wake of a social shift towards civic engagement and social progress. Youth activists have recognized that social issues have plagued American society since its inception and will continue to negatively impact the lives of students if immediate action is not taken. Through this spirit of advocacy, younger generations have learned how to brighten their future by affecting the present, in particular keeping their government in check. Education is a student's fundamental place in society. When students witness an injustice and establish a platform that engages the attention of those in power, they can create a profound social impact. These platforms include assemblies, sit-ins, walkouts, and other demonstrations, all of which take place on school grounds. As the prevalence of student demonstrations increases, so does the opposition to suppress youth voices. School administrators have limited students' rights to speech by calling them disruptive, off-topic, or truant. The purpose of our organization is to advocate to establish protections for students' right to demonstrate in school.

STUDENT DEMONSTRATIONS INITIATIVE

Introduction

The first historically well-known instance of a youth demonstration was in 1955. Over nine months before Rosa Parks's famous protest, fifteen-year-old Claudette Colvin¹ refused to move to the back of the bus she rode, resulting in her immediate arrest. It was not until 1969 when the first Supreme Court case² would begin to set a precedent regarding students' rights to freedom of expression. Four years earlier, the Des Moines Independent Community School District implemented a policy that resulted in the suspension of seven students for wearing a black armband in protest of the Vietnam War. After years in the legal system, the Court ruled that: First, "In wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth." Secondly, "First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment." and finally, "a prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments."

The critical points of the Court's ruling were that the demonstration was not disruptive, students do not lose their First Amendment³ rights when in school, and that expression that does not interfere with other students' rights are protected under the First and Fourteenth Amendments⁴. The decision set precedent that students in school are protected under the First Amendment but are limited to ensure it is non-disruptive and can be proven to stem from proper motivation.

Because of this precedent, schools are not legally allowed to limit students' ability to express their ideas, through words or actions, if the students are not disruptive. Complicating this precedent, however, is the lack of definition for 'disruption,' which can provide a loophole for school staff and administration to more arbitrarily limit the voices of students. The same issue can be applied to clothing. Students are 'permitted' to wear politically motivated clothes to the extent that it does not disrupt the learning environment, but the ambiguity of 'disruption' still remains. In the instance of *Tinker v. Des Moines*, the teacher disrupted the class to ask John Tinker to explain the reasoning behind his armband— although, in oral arguments, the petitioner explained that this class was usually conducted through open discussion. As such, the armbands were deemed non-disruptive in that particular instance, but little Court insight remains for other articles of clothing or class situation.

While schools are also not permitted to punish students for their ideas, they commonly utilize other rules and technicalities to disincentivize student speech and action. For example, in 2016, dozens of high school students in Prince George's County walked out of school in protest of the election of President Trump, ignoring warnings from school officials. These students were not punished for "protesting," but they received unexcused absences for walking out of school. Absences, though not officially a disciplinary practice, were used against students as a means to

¹ <https://www.npr.org/2009/03/15/101719889/before-rosa-parks-there-was-claudette-colvin>

² *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

³ U.S. Const. amend. I

⁴ U.S. Const. amend. XIV

MARYLAND STUDENT COALITION

suppress their voice. Unexcused students are typically not permitted to make up work they missed during their absence, and if they are absent for an extended period, they can be prevented from graduating altogether. While this drastic scenario is very unlikely, it is an affront to the intent behind *Tinker* and detrimental to students seeking to advocate for issues important to them.

Further judicial precedent regarding students' right to freedom of speech was decided in 1986⁵. High School student Matthew Fraser made a speech before six hundred of his peers, nominating a few classmates for elected office. During the speech, he used graphic sexual metaphors resulting in his suspension for two days. The Court held that it was appropriate for the school to prohibit students from using vulgar language, arguing that "lewd speech is inconsistent with the fundamental values of public-school education." Several Justices dissented the opinion of the Court⁶including Justice Marshall, who wrote that "we may not unquestioningly accept a teacher's or administrator's assertion that certain pure speech interfered with education." This established the question, *'What extent do we trust the judgment of the schools to limit speech?'*.

One year later, the Supreme Court heard another case about students' right to speech⁷. In this case, a newspaper written and edited by students was censored by the school administration. The students brought the matter to Court, questioning whether the school had the right to delete articles by the students. The Court held that the school did not offend the First Amendment by controlling the content of a "school-sponsored publication." This case also resulted in several Justices' dissenting, including the opinion that "public educators must accommodate some student expressions even if it offends them or offers views or values that contradict those the schools wish to inculcate." This opinion established the question, *'Can the school limit a student's speech if it offends them, or they contradict the school's values?'*

Finally, decades later, in 2007, the Supreme Court heard another case regarding students' right to speech and expression⁸. This case was about a student who was suspended from school after displaying a banner with "Bong Hits 4 Jesus" in front of the school. The school justified their actions because they interpreted the banner as a promotion of illegal drugs. It was also stated that the banner was not shown with the intent for a political demonstration, rather than just an expression of free speech.

Although none of these cases directly pertain to students' assembling and organizing a demonstration on school grounds, they provide essential information concerning the Court's opinions on how the First Amendment applies to students. First, students are protected from repercussions from their school regarding their exercise of free speech off-campus in non-school-affiliated contexts.. However, the school can, and in most cases, will discipline the students for missing class. The State of Maryland must establish protections that allow students to demonstrate on and off school grounds during school hours and ensure school administrations do not exploit attendance policies to suppress students' voices.

⁵ Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986)

⁶ Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986) (7-2 decision) (Marshall, T., dissenting)

⁷ Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

⁸ Morse v. Frederick, 551 U.S. 393 (2007)

**COMMON
QUESTIONS**

Liability

Are school systems going to be held liable if an accident were to occur on school grounds? If so, what would that look like?

Students have a reasonable expectation for safety while attending school, and the school has the legal responsibility to ensure the safety of students while on campus⁹. The Supreme Court has also held that a municipality can impose regulations on a demonstration to "create order and safety." This means the school, a public government institution, can impose regulations requiring prior knowledge of an upcoming demonstration to ensure those participating are compliant with standing regulations and operate in a safe, non-conflicting manner. By being granted the right to require prior notice of student demonstrations,, the school should incur the responsibility of ensuring the safety of all participants and should be held liable for accidents if student organizers provide reasonable notice.

For demonstrations that occur without providing reasonable notice, the school system should not be held liable for any injuries at a student-led demonstration, but the liability could be held on the student organizers or participants. This means that schools should not prevent spontaneous demonstrations, but they would not assume responsibility for any misconduct or accidents if they have not been provided reasonable prior notice. Students should only be held liable for their safety if they wish to participate in a spontaneous student-led demonstration or assembly.

When provided reasonable notice of an upcoming student demonstration, it is expected that the school should take all reasonable precautions to ensure the safety of all participants. These measures should not limit the speech of demonstrations, but they could limit actions that are illegal or violate other sections of other governing and disciplinary documents.

Who will be overseeing student-led demonstrations?

School systems ought to provide the necessary precautions to ensure safe and orderly demonstrations. This can include having an administrator or faculty member present for the duration of the assembly. Any faculty member(s) involved in the planning of the demonstration should be in attendance and thus should be part of the overseeing of the assembly.

What happens if a student gets hurt while attending a student-led demonstration?

Like all civil cases, it depends on the action. As previously stated, students have a reasonable expectation of safety while in school. If a student were to participate in actions (such as violence, rowdiness, indecent behavior), there is no expectation for the school and school system to be held liable for their actions.

Who is liable for the topic of discussion?

Student organizers who are leading the demonstration should be responsible for the topic of discussion. Furthermore, the school and school system would not be required to endorse the topic

⁹This comes from the legal doctrine of *loco parentis*, which means "in the place of a parent", where there is the legal understanding that if a student is temporarily in the custody of another trusted adult, they are acting in place of a parent and assume all liability over the safety of the student.

STUDENT DEMONSTRATIONS INITIATIVE

of discussion, but they would be permitted to do so.

Who is responsible for cleaning up after the demonstration?

Students should be permitted to distribute literature and other supplemental documents related to the cause of their assembly. However, student organizers would be responsible for adequately discarding such loose-leaf items left behind at the student demonstration. If a participant were to misbehave and commit an act of vandalism involving paint or other hard to remove the substance, student organizers would not be responsible for using paint/substance removing chemicals.

Truancy

How will students be held responsible for skipping class to demonstrate in a planned student-led assembly peacefully?

Students who wish to participate in a planned student demonstration should be marked 'present' for the school day and any class periods that occur during the demonstration. Students should not be subjected to an administrative consequence if they wish to participate in a planned student-led demonstration on school grounds. If a student is denied their right to participate in demonstration or assembly, it should qualify as their freedom of expression and right to peacefully assemble. Any student who wishes to participate in a student-led demonstration should be provided allotted time to complete the assignments they missed while they were exercising their First Amendment rights.

How will students be held responsible for skipping class to demonstrate in a spontaneous student-led assembly peacefully?

Students should not be subjected to an administrative consequence if they wish to participate in a spontaneous student-led demonstration on school grounds. However, it should be the student's responsibility to communicate with their teachers about attending such a demonstration and to request any assignments they miss while they take part in the demonstration. Teachers should provide an allotted time slot for students who miss class

participating in a spontaneous demonstration to make up their missing classwork assignment(s). This can mirror policies regarding students' excused absences established in several states¹⁰. Students who wish to participate in a spontaneous student-demonstration should also be marked 'present' for the school day.

Where are demonstrations allowed to take place?

All student-led demonstrations should take place at the school attended by the organizers, and should only be attended by students at that school. These demonstrations should be on-campus in a safe and open area. These areas may include but are not limited to outside fields, inside the gymnasium, cafeteria, and designated classroom(s).

Are students required to be present for school?

To ensure student safety, students must be marked 'present' for the school day to be allowed to participate in any student-led demonstration. Students who choose to leave school grounds during a student-led demonstration will be subject to potential consequences from their school. These protections must prevent truancy consequences for all planned and spontaneous student-led demonstrations so long as they remain on-campus.

¹⁰ Washington State Legislature. n.d. *WAC 392-401-020: Excused Absences*. <https://apps.leg.wa.gov/wac/default.aspx?cite=392-401-020&pdf=true>.

STUDENT DEMONSTRATIONS INITIATIVE

Can students exploit this bill to get out of school for extended periods?

Both planned and spontaneous student-led demonstrations will require a political motive. Students who wish to organize and participate in such demonstrations must have a reasonable excuse for a public demonstration. Therefore, students cannot utilize this policy to get out of class.

Disruption

While these protections exist to protect the rights of students' demonstrating in school, it should in no way interfere with the learning of students who are not participating. Demonstrations in no way can disrupt the normal operations of the school and shall abide by all other school policies.

What is a disruption?

Disruption is an action that directly interferes with the normal operations of the school. These include¹¹:

1. Gathering in a way that physically hinders entrances to, exits from, or passageways within the campus
2. Gathering in a way that physically hinders the normal flow of pedestrian or vehicular traffic on or to the campus.
3. Creating a volume of noise that interferes with the normal activities of the campus.
4. Employing violence or threat of violence against a group of persons, an individual, or a piece of property.

Disruptions are apparent and require minimal interpretation. If it is preventing others from learning or participating in the daily functions of the school, then it is likely a disturbance. Disturbances can be prevented by the school administrators¹² and may be appealed by the county Ombudsman or similar appellate institutions. If students feel that the school is improperly preventing a demonstration and inappropriately deeming a demonstration as "disruptive," they are encouraged to appeal the decision.

Are there any materials deemed 'disruptive' or 'inappropriate'? If so, what are they, and will they be allowed to be distributed?

Disruptive materials are those that interfere with the operations of the school (i.e., noisemakers, silly string, etcetera) or promote illegal¹³ or inappropriate messages (i.e., drug/alcohol usage, pornography, etcetera). The only exclusion of these inappropriate materials is if these messages have a clear political motive behind their promotion.

¹¹ https://www.fordham.edu/info/21684/university_regulations/3709/demonstration_policy.

¹² Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986)

¹³ Morse v. Frederick, 551 U.S. 393 (2007)

Hate Speech

Will hate speech be regulated?

Hate speech should **not** be regulated. Although we strongly condemn all forms of discriminatory and hate-filled speech, it is not the place of the schools¹⁴ to decide to limit the topic of the demonstration. If we allow school administrations to determine what is appropriate and what is not, valid forms of demonstration may be falsely limited.¹⁵

Although hate speech should not be limited, the community needs to recognize and react to hate-filled demonstrations. Although there is no legal definition of hate speech, the United Nations refers to "hate speech" as:

Any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor.

Hate speech is any form of discrimination against a group, and is commonly motivated against a religion, ethnicity, race, gender, or sexual orientation. While some direct statements of hate speech do not immediately incite violence, they can result in an overall feeling of intolerance and anger that will eventually legitimize acts of hate.

If students participate in a demonstration that promotes hate speech, no disciplinary actions shall be taken by the school but should be a necessary reflection of the change needed in the community to ensure similar demonstrations do not continue to occur.

¹⁴ Snyder v. Phelps, 562 U.S. 443 (2011)

¹⁵ Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988) (5-3 decision) (Brennan, W., dissenting)

Why This Concerns The State

The purpose of this proposal is to establish the guidelines and legal parameters for students who wish to engage in civil discourse through the means of peaceful demonstrations in the State of Maryland. Students must have a clearly outlined procedure that explains how they can proceed when they intend to exercise their First Amendment rights on school grounds. This proposal lays out such a framework in which all students in the State of Maryland can freely exercise their First Amendment rights.

Here in the State of Maryland, students have held impactful demonstrations through the means of peaceful protest in just the past few years. On 21 February 2018, Howard County students took to their respective schools' football fields to protest against gun violence and call for reform to gun policies after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida. Student climate activists in Howard County have also led demonstrations via a partnership with the Sunrise Movement regarding the growing concerns about climate change. Montgomery County has led the way in progressive policy by proposing revisions to their existing attendance policy that would excuse student absences if they participate in a protest.

However, other counties in Maryland have not been as accommodating for students who wish to participate in peaceful demonstrations. For instance, Anne Arundel County has limited free speech by restricting demonstration and mass protest, as directly outlined in their school handbooks. Students who participate in a demonstration or mass protest can be subject to a three to a five-rate disciplinary consequence, resulting in anywhere from detention to long-term suspension.

It is unacceptable for the State of Maryland to allow local school jurisdictions to deny students their First Amendment rights to demonstrate peacefully without worry of facing repercussions. Beyond the fact that students' rights to free speech and assembly are unalienable, there is also unparalleled education benefit to students being politically and socially engaged in a school setting. The foundation of our education system is to forge the leaders and inspired citizens of tomorrow, and there are few experiences that aid that goal than self-motivated students advocating for the causes important to them. Involvement in these causes teaches untold lessons in government, philosophy, and history with an experiential dimension that is hard to find in a classroom. Further, the necessary skills of planning, negotiation with administration, advertising, and programming are valuable tools for college and career readiness. To enhance the educational value of our schools, it is paramount that we permit students to learn through their right to demonstrate.

Thus, it is to this end, we the students of the State of Maryland strongly advocate that the State of Maryland create protections that:

1. Recognize that institutions of secondary education should facilitate and recommit themselves to protecting the free and open exchange of ideas; and
2. Recognize that freedom of expression and freedom of speech are sacred ideals of the United States that must be vigorously safeguarded for all generations to provide an outlet

STUDENT DEMONSTRATIONS INITIATIVE

- for all to address their grievances in the most substantive manner; and
3. Encourage or compel local Boards of Education to promote policies that foster spirited debate, academic freedom, intellectual curiosity, and viewpoint diversity on the campuses of public secondary schools; and
 4. Encourage or compel the Attorney General of the State of Maryland to defend and protect the First Amendment across the public secondary schools.

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MARYLAND STUDENT COALITION

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MARYLAND STUDENT COALITION

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Support for HB0753

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Maryland Youth Advisory Council (“MYAC”);
Howard County Association of Student Councils (“HCASC”);
Montgomery County Regional Student Government Association (“MCR-SGA”);
Maryland Association of Student School Board Members;
Howard County Board of Education (w/ Amendments);
Prince George’s County Board of Education (w/ Amendments);
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Lynne Harris, *Member of the Montgomery County Board of Education*
Elizabeth Walsh, *Chair, Howard County Council*
Christiana Rigby, *Councilwoman, Howard County*
Eric Luedtke, *Majority Leader of the House of Delegates*

Example Policy

The purpose of this proposal is to establish the parameters by which students have the right to engage in civil discourse through the means of peaceful demonstrations.

Policy Statement

The State of Maryland is committed to providing an educational system which enables students to constructively express their rights to speech and assembly. The State believes that defined means through which to foster student activism in the school setting is conducive to the development of students as informed and engaged members of society.

The State believes in effective student voice practices which are designed to elevate student activism and participation through civil discourse. To this end, the State's student demonstration proposal sets forth the encouragement of student voice practices to engage the student body population in a way that is fair, equitable, and consistent.

Purpose

The purpose of this proposal is to establish the parameters by which students have the right to engage in civil discourse through the means of peaceful demonstrations.

Definitions

Within the context of this proposal, the following definitions apply:

Student Demonstration - An organized assembly of students peacefully expressing a position with the aim of raising awareness or advocating for change from the status quo.

Peaceful Protest - A form of organized assembly in which the intended purpose is to bring attention to an issue unique to the body of individuals participating in the demonstration.

Civil Discourse - Engagement in conversation intended to enhance understanding of a situation.

Disruption - An action that directly interferes in the operations of the school.

Liability - The State of being responsible for something, especially by law.

Hate Speech - Any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group based on who they are.

Spontaneous - A demonstration that did not provide previous notice to the school administration.

Student Activism - Work by students to cause political, environmental, economic, or social change.

Student Organization - A student run group on school grounds that is established, ran, and comprises current students at the school.

Ombudsman - An official appointed to investigate individuals' complaints against maladministration.

Third Party - An organization or entity unaffiliated with the public-school system.

STUDENT DEMONSTRATIONS INITIATIVE

Truancy - The intentional, unjustified or unauthorized absence from compulsory education by a students' own free will.

Standards

This proposal applies to all students while on school property, during a school-related activity, and/or otherwise subject to the authority of the public-school system. This includes, but is not limited to, school buses, bus stops, school-sponsored events, field trips, athletic functions, and any other activity where school administrators have jurisdiction over students.

The Maryland State Guidelines for Code of Discipline will establish the standards for student behavior and disciplinary consequences for violations of those standards.

No matter the protest, all members of the community are expected to conduct themselves with personal integrity and respect for the rights, differences, and dignity of others.

A student or student-led group of the school must be the designated organizer for the event.

No third-party group should enter school grounds for the protest

Third party provided resources are permitted, however, they must be reviewed and approved by the designated administrator or teacher before distributed at the protest.

The organizer(s) must meet with the school administration to coordinate the planned event and is encouraged to schedule this meeting well in advance. The planned demonstration may be scheduled no fewer than two school days after this meeting. The meeting will be to review the details of the proposed demonstration which includes but is not limited to proposed time, place, manner and planned size. If the organizer(s) plans the event on behalf of a recognized club or organization, an advisor to the club or organization shall attend this meeting as well.

Administration must provide for students the right to choose the means of protest.

Except in the case of a safety risk or other infringement of the school code of conduct policy, the administration shall approve a demonstration on any other grounds.

The timing and length of the planned demonstration shall be decided through negotiation between the student organizers and the administration, in the same way as all other details.

In the situation whereby the school administration opposes the student demonstration, the student representative(s) have the right to appeal this decision in accordance with local Ombudsman Policy.

The school administration is required to communicate with staff members about the demonstration(s) being organized no less than one day in advance.

Faculty are not allowed to punish students who wish to participate in demonstrations approved by the school administration.

Academic work makeup is up to the discretion of the local school system.

MARYLAND STUDENT COALITION

It is the student or student organization's responsibility to garner support, not that of the school, school staff, or the administration.

The school and/or administration as well as the public-school systems assumes no responsibility or endorsement of the demonstration.

In accordance with the Annotated Code of Maryland, Education Article, Section 26-101, a person cannot disturb the regular and orderly conduct of activities, administration, or classes.

If a planned demonstration or the actions of the demonstration are not in accordance with this proposal, any referenced policy, or the plan decided upon between the students and administration (and potentially the community superintendent and/or any other ombudsman), disciplinary actions may be sought out in pursuance with the Maryland Guidelines for a State Code of Discipline.

Should an emergency transpire that would risk the safety of students and staff during the planned demonstration, the public school system reserves the right to postpone the demonstration to a later date to be agreed upon in the same planning meeting method (see 4.)

If there is to be an unorganized demonstration held due to a quickly sparked matter, students may still exercise their right to assembly but with the risk of disciplinary action taking place.

Responsibilities

The Superintendent/Designee will ensure staff receives training and resources necessary to implement this proposal.

The Superintendent/Designee will notify all school administrators annually of any provisions that may occur with this proposal.

The Superintendent/Designee will ensure students, parents, school security personnel, and staff members are notified of any provisions that take place in this proposal.

Students will comply with all school rules and procedures and will exhibit the expected student behaviors delineated in the Maryland Guidelines for a State Code of Discipline.

STUDENT DEMONSTRATIONS INITIATIVE

Draft Resolution

A Resolution Concerning:

Public Secondary School Students' Rights to Peacefully Assemble and Demonstrate on School Grounds and During School Hours

FOR the purpose of recognizing the rights of the student body to exercise their First Amendment right to demonstrate through the means of peaceful assembly on school property, during school hours in the State of Maryland.

WHEREAS, the First Amendment of the Constitution of the United States provides protection of the people to exercise their inalienable right to freedom of speech, assembly, and redress; and

WHEREAS, in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Supreme Court of the United States held that "First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment." and that "a prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments."; and

WHEREAS, there have been several instances across the state of Maryland, where local school systems have limited students ability to demonstrate through inappropriate punishment and suppressive measures such as in-school and out-of-school detention and suspension; and

WHEREAS, few school systems in the state of Maryland currently have policies outlining the procedure of organizing such demonstrations, resulting in confusion by school administrators and student participators on liability, responsibility, and the definition of "disruption"; and

WHEREAS, a coalition of students from varying counties and school systems across the state of Maryland have called for immediate state-wide action; and

WHEREAS, with the clarity of the applicable legal precedent and the vital importance of protecting public schools in the state of Maryland as true marketplaces of ideas; be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, recognizes that

institutions of secondary education should facilitate and recommit themselves to protecting the free and open exchange of ideas; and be it further

RESOLVED, That the Maryland General Assembly recognizes that freedom of expression and freedom of speech are sacred ideals of the United States that must be vigorously safeguarded for all generations to provide an outlet for all to address their grievances in the most substantive manner; and be it further

RESOLVED, That the Maryland General Assembly encourages local Boards of Education to promote policies that foster spirited debate, academic freedom, intellectual curiosity, and viewpoint diversity on the campuses of public secondary schools through means of peaceful demonstrations; and be it further

MARYLAND STUDENT COALITION

RESOLVED, That the Maryland General Assembly encourages the Attorney General of the State of Maryland to defend and protect the First Amendment across the public secondary schools of Maryland.

**SUPPORTING
DOCUMENTS**

Major Points

We propose a uniform state bill that sets a baseline for regulations regarding students' right to demonstrate. While jurisdictions may extend or complement these regulations, this bill is intended to set comprehensive requirements that will ensure students' rights are protected.

The Bill Must:

- 1) Outline provisions for who is liable depending on factors such as prior notice and student behavior.
 - a) Students have an obligation to notify school officials in advance of a planned demonstration
 - i) In cases where students provide prior notice of planned demonstrations, the school or school system becomes liable for the safety of students within reason (controllable and foreseeable situations)
 - ii) Local schools and jurisdictions can impose specific time requirements for prior notification
 - iii) For demonstrations that occur without providing reasonable notice, the school or school system is not held liable for the occurrences at the demonstration.
 - (1) Instead, students are liable for their own safety
 - (2) However, schools may not prohibit spontaneous demonstrations so long as they have a clear political or social motive
 - iv) When notified of an upcoming demonstration, the school should take all reasonable precautions to ensure the safety of all participants without limiting the speech of participants
 - b) Who is liable for the topics discussed at demonstrations?
 - i) Students are liable for the topic of discussion. the school and school system would not be required to endorse the topic of discussion, but they would be permitted to do so.
- 2) Outline regulations for truancy and absences during student demonstrations
 - a) Students who participate in planned student demonstrations must not be marked absent for the school day or individual classes
 - b) Students who participate in spontaneous demonstrations must have opportunities to make up work they missed during the demonstrations
 - c) Students must be marked "present" for the school day to be allowed to participate in a student-led demonstration
- 3) Set boundaries for where demonstrations may take place
 - a) All student-led demonstrations must take place at the school attended by the organizers, and should only be attended by students at that school.
 - b) Demonstrations must be on-campus and in a safe and open area
- 4) Set parameters for demonstrations in that they must have a clear political or social motive
- 5) Prevent faculty from punishing students who wish to participate in demonstrations.

STUDENT DEMONSTRATIONS INITIATIVE

- 6) Allow for students to be the designated organizer of any planned demonstration.
- 7) Prohibit student demonstrations from being a source of disruption.
 - a) Students are refrained from blocking emergency exits and causing disruption in classrooms for non-participants.
 - b) If either of the above is violated, students will be individually held accountable at the discretion of the respected school administration.
 - c) The student organizers of the demonstration will not be held accountable unless they took direct part in the obstruction or disruption.
- 8) Reserve the right for the public school system to postpone demonstrations due to an emergency or inclement weather.
- 9) State that hate speech is not directly prohibited as a topic of student demonstrations
- 10) All students are expected to conduct themselves with personal integrity and respect for the rights, differences, and dignity of others.

Legislative Language

AN ACT concerning

Education – Student–Organized Peaceful Demonstrations – Student Discipline and Policy

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.

BY adding to

Article – Education

Section 7–312

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

[HOUSE/SENATE] BILL [#]

Article – Education

7–312.

(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) create create a clear and present danger to the health, safety, or welfare of the school community; or

(ii) commit an unlawful or dangerous act.

(b) this section applies to a student–organized peaceful demonstration that occurs:

STUDENT DEMONSTRATIONS INITIATIVE

- (1) on school property;
 - (2) at a school–sponsored activity or event; or
 - (3) on a school bus.
- (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.
- (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.
- (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.
- (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:
 - 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

MARYLAND STUDENT COALITION

(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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 31 1, 2021.

**END OF
DOCUMENT**

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