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HOUSE WAYS AND MEANS COMMITTEE
TESTIMONY OF DISABILITY RIGHTS MARYLAND
**HOUSE BILL 146 – Education- Reportable Offenses and Student Discipline-
Alterations**

February 3, 2022

Position: Support

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.

DRM supports HB 146, which puts critical limits on how school systems can remove students for reportable offenses, provides students who are removed 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.

As Maryland’s Protection and Advocacy agency, we receive intake calls from parents all over the state who are concerned that their children’s education rights are being violated. As a result of these calls and subsequent investigation and legal representation of students, we are aware that the state’s current reportable offense law is overly broad and out-of-line with the vast majority of states that have a reportable offense law, does not provide students with sufficient due process consistent with current state discipline law and federal and state special education law, and is being abused by some school systems. The consequence of having such an outdated and overly broad reportable offense law in Maryland is that students are being unnecessarily removed from school for long stretches of time for minor out-of-school behaviors which results in them becoming disconnected from school and triggers all the harms and negative education outcomes that suspensions, expulsions and other forms of exclusionary discipline cause. This shadow part of the school-to-prison pipeline must be reformed.

Under current law, school districts routinely and unilaterally remove students from school for indefinite periods of time when students are arrested off school grounds for conduct unrelated to school. These alleged reportable offenses often have no nexus to the child’s school or educational needs. Current law requires that a mere arrest trigger reporting to the school district, rather than a finding of delinquency or a conviction. With approximately 60% of all arrests and cases resolved

by the Department of Juvenile Services without any petition filed either due to the case requiring no further action or a child successfully completing services through an informal adjustment, the current reportable offense statute casts too great a net. HB 146 fixes this by changing the point of reporting from arrest to a finding of delinquency or a conviction, changing the reporting agency from the law enforcement agency to the State's Attorney's Office, and making reporting optional rather than mandatory.

Another problem with the reportable offense law is that it is outdated and out-of-line with current law. In 2014, in an effort to address school climate and reduce reliance on exclusionary discipline, MSDE promulgated discipline regulations that provide students with rights and due process protections during the removal process from school. The reportable offense law does not include any of these rights or due process protections. Even though the reportable offense law is supposed to be triggered by offenses that happen *off school grounds* and therefore have no direct nexus to school, schools have much more authority under the reportable offense law to remove students for longer periods of time than they do under the discipline regulations 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 the legally required protections due them 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.

Another primary problem with the current reportable offense law is that some school systems are abusing the law and using it to remove and banish students to alternative schools for school-based arrests that should be governed by the discipline regulations. Because the reportable offense law

does not provide the due process protections and rights provided by the school-based discipline regulations, we have seen first-hand that school systems improperly classify a school-based arrest as a “reportable offense” as pre-text to expel students by indefinitely removing them from their regular education placement to an alternative school program. This allows school systems to circumvent Maryland’s more stringent discipline regulations and remove students for school-based behavior without oversight or review. The ostensible purpose of the reportable offense law is to address how court-involvement for behavior off school grounds may – in narrow circumstances – affect school safety, it is not to create a shadow disciplinary process that evades review. HB 146 fixes this problem by defining a reportable offense as an offense that occurs off school property and by directing school systems to follow existing school discipline procedures for students if they propose to remove a student from school based on a reportable offense. This way, there is no incentive for school systems to attempt to evade the school discipline regulations by invoking the reportable offense law.

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.

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

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