

Education Advocacy Coalition

for Students with Disabilities

SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

SENATE BILL 829: PRIMARY AND SECONDARY EDUCATION—VIRTUAL EDUCATION—REQUIREMENTS

DATE: MARCH 1, 2023

POSITION: LETTER OF INFORMATION

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of approximately 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, submits this Letter of information regarding Senate Bill 829, which authorizes virtual education days in the event of severe weather, sets standards for virtual education schools, addresses professional development, and sets forth the components of the virtual education plan that each county school board must develop. The EAC appreciates that Senate Bill 829 requires county school boards to ensure that students with disabilities have access to devices, Wifi, and continued access to continued implementation of their individualized education programs (IEPs) during periods of virtual instruction. We file this letter of information to share our member organizations' experiences with virtual education for students with disabilities and their families and to bring several issues to the attention of Committee members.

It is clear from looking back at the initial pandemic-related period of virtual education, subsequent intermittent periods of virtual education, and the virtual learning programs (VLPs) created for the 2021-22 school year, some of which are still operating, that these programs were designed without fully taking into account the needs of students with disabilities. Although some students with disabilities were able to pivot successfully to virtual education and may even have preferred remote to in-person learning, other students had a disastrous experience and still have not recovered; EAC members have represented or worked with numerous children and youth whose disabilities prevented them from accessing or benefiting from virtual education. Some of these children could not log in or participate because they needed one-to-one support to physically access the education program and be guided to focus on what was happening on screen; their parents were unavailable or unable to serve as their child's instructional assistant because of their jobs, their other child care responsibilities or the inability of the child to work with the parent in the assistant role. Other children were unable to participate in virtual education because the instruction platform was not accessible to them and the school system did not choose accessible alternative platform and instructional materials. Other children could not tolerate virtual instruction and had severe behavioral episodes, trying to destroy their devices or engaging in self-injurious or aggressive behavior. Although some students with disabilities will be able to pivot to virtual learning if it becomes necessary, others will not, and Senate Bill 820 does not offer an alternative that would allow children who need either in-person services or in-person support to access virtual education to receive those services or support.

With respect to the VLPs, many families who welcomed the possibility of having their child attend school remotely because of continuing health concerns encountered barriers when the VLPs refused to accept students with IEPs, saying their needs could not be met in the VLP and refusing to make reasonable accommodations as required by federal law. Students with disabilities were routinely denied

enrollment in the VLPs or had their acceptance rescinded for reasons ranging from a need for testing accommodations or reading support to the need for more intensive services than what the VLP said it could provide. VLPs did not independently consider accommodations under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Americans with Disabilities Act). Students with disabilities who could not attend school in person had no alternative but to seek home and hospital instruction, a much-reduced program offering only a few hours a week of instruction, with no peer contact. The United States Department of Education's Office for Civil Rights is currently investigating one Maryland jurisdiction's VLP for discrimination on the basis of disability.

Additionally, some school systems and nonpublic schools have increasingly begun to use virtual education as an illegal placement for students with disabilities who have been suspended or expelled. This type of virtual education occurs in a myriad of unregulated ways, as school districts are not required to collect or provide data regarding how virtual education is being used for students on disciplinary removal. In some instances, students are only provided with continued "access" to their classes through the virtual platform used in their regular education placement, but they are not provided with any live instruction in their classes, making educational progress all but impossible. In other instances, students are enrolled in a virtual alternative school or other type of online learning that they access from home. These virtual program options are unlawful, however, when used in the disciplinary context for students with disabilities who, by law, are not permitted to be forced to receive their education at home after being subjected to disciplinary action. Contrary to the letter of spirit of Maryland's discipline laws and regulations, which aim to keep students connected to their school communities and on track with classroom work and progress towards IEP goals, some school systems appear to use virtual education as a convenient, if unlawful, alternative for students who are removed from school for disciplinary reasons. Unfortunately, we have seen far too many students placed on virtual education during disciplinary removal who do not, for a variety of reasons, access instruction and are ultimately deemed to be truant.

Further, some school districts and nonpublic schools have also begun to unilaterally place students on virtual education after a disciplinary incident but do not consider the removal to virtual education to be a disciplinary removal, thus flouting legal requirements. Senate Bill 829 contains no "guardrail" provisions regarding circumstances when virtual education would be inappropriate, such as in response to the suspension of a student with disabilities.

We hope this information is helpful as the Committee considers the need to ensure that all students, including all students with disabilities, have access to education during times when school buildings are closed and, more generally, as virtual schools and programs become a more permanent component of Maryland's education system. For more information or if questions, please contact Leslie Seid Margolis, Chairperson, at lesliem@disabilityrightsmd.org or 443-692-2505.

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