

EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE
SENATE BILL 812
HIGHER EDUCATION – DISCIPLINARY RECORDS – USE IN ADMISSIONS AND
DISCIPLINARY PROCEEDINGS
POSITION: SUPPORT

The Youth, Education, and Justice Clinic (“the clinic”) at the University of Maryland Carey School of Law represents students excluded from school through suspensions, expulsions and other means. This clinic aims to keep children in school to ensure their access to the education they need and deserve. **The clinic strongly supports Senate Bill 812**, which would prohibit institutions of higher education from asking about an applicant’s disciplinary record during the admissions process.

Prohibiting institutions of higher education from asking about an applicant’s disciplinary record during the admissions process prevents the transfer of the discipline disparities that exist in K-12 education. These disparities—well documented at the state and national levels—disproportionately harm Black and Brown students, as well as students with disabilities.

In Maryland, Black students are roughly three times as likely to experience exclusionary discipline¹ than white students, despite the overall enrollment of Black and white students being the same.² In the 2021-2022 school year, Black students made up approximately 33% of the total enrollment in Maryland schools but approximately 60% of the state’s out-of-school suspensions and expulsions.³ White students, on the other hand, also made up approximately 33% of the state’s total enrollment, but represented just 21.69% of the state’s out-of-school suspensions and expulsions.⁴ Similar discipline disparities exist throughout the United States.⁵ Nationally, Black students are almost twice as likely to receive a suspension or expulsion than white students for

¹ “Exclusionary discipline” is defined as disciplinary actions that remove a student from the regular educational environment, including, but not limited to, suspensions and expulsions. Statewide data about in-school suspensions is not available because the Maryland State Department of Education only publishes data about out-of-school suspensions and expulsions.

² MD. STATE DEP’T. OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS BY SCHOOL AND MAJOR OFFENSE CATEGORY, OUT OF SCHOOL SUSPENSIONS AND EXPULSIONS, 2021-22, 1 (2022), https://marylandpublicschools.org/about/Documents/DCAA/SSP/20212022Student/2022_Student_Suspensions_By_School_OutOfSchool.pdf (hereafter OUT OF SCHOOL SUSPENSIONS AND EXPULSIONS, 2021-22); MD. STATE DEP’T. OF EDUC., MARYLAND PUBLIC SCHOOL ENROLLMENT BY RACE/ETHNICITY AND GENDER AND NUMBER OF SCHOOLS, SEPTEMBER 30, 2021, 1 (2022), https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20212022Student/2022_Enrollment_ByRace_Ethnicity_Gender_Publication_Accessible.pdf.

³ See *supra* note 2.

⁴ See *supra* note 2.

⁵ Johanna Lacoë & Mikia Manley, *Disproportionality in school discipline: An assessment in Maryland through 2018*, REG’L EDUC. LAB’Y MID-ATLANTIC 1 (Sept. 2019), <https://files.eric.ed.gov/fulltext/ED598820.pdf>.

the same misbehavior.⁶ Students with disabilities are also twice as likely to be suspended or expelled than their non-disabled peers.⁷

The intersectionality of race, disability, and gender means that some students are even more impacted by the already-disparate application of school discipline. For example, Black girls in Baltimore are 4 times more likely to be suspended and twice as likely to be expelled than white girls,⁸ and Maryland students with disabilities are suspended and expelled from school at more than twice the rates of other students.⁹

These disparities cannot be explained by different rates of student misbehavior, as studies have shown that all students misbehave at roughly the same rate, regardless of their race or gender.¹⁰ Although poverty correlates with increases in disruption or behavioral disorders, those relationships tend to be small and do not come close to explaining the massive discipline gap between white and Black children.¹¹ These discipline gaps remain even when all other variables are removed. Thus, for the same infraction in similar circumstances, a white student is significantly less likely to be disciplined significantly than a Black peer.¹²

Instead, researchers have shown that implicit bias, cultural stereotypes, and even explicit prejudice explain why Black and Brown students are disciplined at much higher rates than white students.¹³ This is particularly true for “subjective” offenses, such as defiance, disrespect, or disruption.¹⁴ Implicit biases, stereotypes, and prejudice saturate teacher and administrative decisions to discipline students for subjective offenses.¹⁵ Again, the Maryland data bears this out: in the 2021-22 school year, approximately 55% of the out-of-school suspensions and expulsions for disrespect or disruption were imposed on Black students.¹⁶

Put simply, teachers are more likely to refer Black students to the office for disciplinary action, even when they exhibit the same behavior as white students. And once Black students arrive in

⁶ *Id.*

⁷ *Id.*

⁸ CARA MCCLELLAN, NAACP LDF INC., OUR GIRLS, OUR FUTURE: INVESTING IN OPPORTUNITY AND REDUCING RELIANCE ON THE CRIMINAL JUSTICE SYSTEM IN BALTIMORE 2 (2018), https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf.

⁹ Lacoë & Manley, *supra* note 5, at 1.

¹⁰ MD. COMM’N ON THE SCHOOL-TO-PRISON PIPELINE AND RESTORATIVE PRACS., FINAL REPORT AND COLLABORATIVE ACTION PLAN, 29-30 (2018), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>. (hereafter, FINAL REPORT AND COLLABORATIVE ACTION PLAN).

¹¹ Nathan Barrett et al., *Technical Report: Disparities in Student Discipline by Race and Family Income*, EDUC. RSCH. ALLIANCE FOR NEW ORLEANS 8-9, 27 (Jan. 4, 2018), <https://educationresearchalliancenola.org/files/publications/010418-Barrett-McEachin-Mills-Valant-Disparities-in-Student-Discipline-by-Race-and-Family-Income.pdf>.

¹² *Id.* at 8-9.

¹³ FINAL REPORT AND COLLABORATIVE ACTION PLAN, *supra* note 10, at 30. *See generally* Erik J. Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 SCHOOL PSYCH. Q. 392 (2016).

¹⁴ Girvan et al., *supra* note 13, at 400-02.

¹⁵ FINAL REPORT AND COLLABORATIVE ACTION PLAN, *supra* note 10, at 29-30.

¹⁶ [OUT OF SCHOOL SUSPENSIONS AND EXPULSIONS, 2021-22](#), *supra* note 2, at 1.

the principal’s office, they are more likely to receive a harsher punishment—for example, an in-school suspension instead of a detention, or an out-of-school suspension instead of an in-school suspension.¹⁷

While enacting SB 812 would prevent these disparities from entering the higher education admissions process, this bill would also codify a trend that already exists within the higher education landscape. Many institutions have changed their applications to only ask about academic and disciplinary violations that occurred in postsecondary school. Notably, in 2020, the Common Application—which is used by over 900 colleges and universities—removed its question about K-12 discipline.¹⁸ This nationwide trend has even spread to law schools and state bar applications. Of the 42 states that make their bar questions public, we identified only 9 state bar applications (including Maryland) that do not limit their question about academic and disciplinary violations to incidents that occurred in institutions of higher education.

SB 812 will not fix the problems that exist in K-12 discipline, but it will ensure a more equitable review process for all applicants to Maryland institutions of higher education. By passing SB 812, the Maryland General Assembly can help ensure that the inequitable disciplinary practices that affect students across the country do not negatively impact their futures.

For these reasons, the Clinic asks for a favorable report on SB 812.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

¹⁷ Lacoë & Manley, *supra* note 5, at 3-4.

¹⁸ *E.g.*, Emma Steele, *Common App removes School Discipline question on the application*, COMMON APP (Sep. 30, 2020), (“We want our application to allow students to highlight their full potential. Requiring students to disclose disciplinary actions has a clear and profound adverse impact. Removing this question is the first step in a longer process to make college admissions more equitable.”), <https://www.commonapp.org/blog/common-app-removes-school-discipline-question-college-application>.