

# MARYLAND COALITION TO REFORM SCHOOL DISCIPLINE

## HOUSE WAYS AND MEANS COMMITTEE

### HOUSE BILL 985: PRIMARY AND SECONDARY EDUCATION- VIRTUAL SCHOOLS-ALTERATIONS

**DATE: MARCH 1, 2023**

**POSITION: OPPOSE**

The Maryland Coalition to Reform School Discipline (CRSD) brings together advocates, service providers, and community members dedicated to transforming school discipline practices within Maryland's public school systems. CRSD is committed to the fair and equitable treatment of ALL students, including pregnant or parenting students, regardless of race, ethnicity, gender, gender identity, sexual orientation, disability, religion, and socio-economic status, and reducing barriers to learning for ALL students. CRSD opposes House Bill 985, which would, in part, exempt virtual schools from regulations relating to curriculum, class size, instruction, staffing ratios, professional development, and textbooks.

Virtual schools established pursuant to House Bill 985 would need to determine if they could provide a free appropriate public education to a student with a disability who wants to attend the school. The federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, as well as Maryland law and regulations specify in detail the requirements regarding education of students with disabilities, including provisions regarding specialized instruction and Individualized Education Programs (IEPs), related services and supplementary services and supports, which could include, for example, such services as professional development for staff, adjustments in class size or staffing, curriculum adaptation or modification, and provision of adapted textbooks. These legal requirements cannot be waived.

Additionally, any virtual school receiving federal funds, which would include the schools established pursuant to House Bill 985, would be obligated to comply with Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations. This means that in addition to not discriminating against students with disabilities in its admissions process and in the delivery of education services to them, a virtual school would also have the obligation to provide reasonable accommodations to students with disabilities. Such accommodations could include, for example, the provision of specialized instruction or accommodations such as adjustment of staff to student ratios, professional development of staff, or adapted textbooks. The virtual schools established through the Maryland State Department of Education, a local school board or an institution of higher education would also be subject to the requirements of the Americans with Disabilities Act. These requirements cannot be waived.

Unmooring virtual schools from any obligation to comply with requirements for the basic components of education such as instruction, staffing, professional development, textbooks and curriculum will foreclose to those students with disabilities who may want or need virtual education the possibility of obtaining the free appropriate public education guaranteed to them by federal and state laws.

Further, not all students are able to benefit from virtual education, as we learned from the poor educational outcomes and learning loss resulting from virtual learning during the COVID-19 pandemic. During the pandemic-related school building closures, CRSD members represented or worked with numerous children and youth whose disabilities or other circumstances 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, and their parents/guardians 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/guardian in the assistant role. 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. Other students could not successfully benefit from virtual learning because they did not have quiet spaces to work from in their homes, or reliable and consistent technology and WI-FI. Although some students will be able to pivot to virtual learning if it becomes necessary, others will not, and House Bill 985 does not offer an alternative that would allow children who need in-person services or in-person support to access virtual education to receive those services or support.

Additionally, some school systems and nonpublic schools have increasingly begun to use virtual education illegally as a placement option for students with disabilities who have been suspended or expelled, as well as for regular education students. This type of virtual education occurs in a myriad of unregulated ways, as there is no required data collection on how schools are using virtual education for students on disciplinary removal.<sup>1</sup> In some instances, students are only provided with continued "access" to their classes through the virtual platform, however they are not provided with any live instruction in their classes, making education progress all but impossible. In other instances, students are enrolled in a virtual alternative school they access from home or are otherwise enrolled in some type of online learning accessed from the home. Students' access to this type of virtual education is hindered by internet issues and other technological barriers, particularly when parents or guardians do not have the experience to assist their child to ensure access to the virtual platforms. And more likely than not, students placed in virtual programs for disciplinary reasons may not be able to access the virtual platform or handle the inherent unstructured nature of virtual programs. Yet, we have no data that reports on academic outcomes for students placed in virtual programs. We have seen far too many students placed on virtual education during disciplinary removal who do not attend instruction and are ultimately deemed truant.

Specifically for students with disabilities, the issue of virtual programs is even more complicated as under current law it is in fact an illegal placement if made as a result of a disciplinary removal. Pursuant to COMAR 13.A.05.01.10(C)(6), the instructional setting for the provision of educational services to a student who has been disciplinarily removed from school may not be a student's home because placement in the home is the most restrictive environment as it does not permit instruction to take place with other students. Another problem is that unilateral removal to virtual education during disciplinary removal also does not take into consideration whether the student is able to successfully access or benefit from virtual education. Some school systems appear to use removal to virtual education as a convenient dumping ground for students, including students with disabilities, who are disciplinarily removed, which is contrary the letter and 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 IEP goals. House Bill 985 contains no "guardrail" provisions regarding circumstances when virtual education would be inappropriate, such as in response to the suspension of a student with disabilities.

For these reasons, CRSD strongly opposes House Bill 985.

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<sup>1</sup> Nearly all school systems in Maryland operate alternative schools or programs for children with behavior challenges and children who have been suspended or expelled. However, the Maryland State Department of Education (MSDE) does not collect or report centralized data or information on alternative schools, such as their educational programming, staffing, student assignment procedures, student demographics, and academic outcomes. With the proliferation of virtual education and virtual learning following the school closures due to the COVID pandemic, it is even more critical that this data is collected.

For more information contact:

Megan Berger (Disability Rights Maryland) and Alyssa Fieo (Office of the Public Defender)  
Maryland Coalition to Reform School Discipline  
[CRSDMaryland@gmail.com](mailto:CRSDMaryland@gmail.com)

**CRSD Members**

The Choice Program at UMBC

Disability Rights Maryland

Office of the Public Defender

Public Justice Center

Spencer M. Hall, Esq.

League of Women Voters Maryland

Project HEAL at Kennedy Krieger Institute

Positive Schools Center, UMD School of Social Work

The Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law