

EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

SENATE BILL 61 HIGHER EDUCATION – DISCIPLINARY RECORDS – USE IN ADMISSIONS AND DISCIPLINARY PROCEEDINGS POSITION: FAVORABLE

The Youth, Education, and Justice Clinic (“the clinic”) at the University of Maryland Francis King Carey School of Law represents students who have been excluded from school via suspensions, expulsions, and other means. The clinic strives to keep children in school, thus ensuring their access to the education they need and deserve. Therefore, **the clinic strongly supports Senate Bill 61**, which would prohibit institutions of higher education from asking about or considering an applicant’s disciplinary record during the admissions process.

Prohibiting postsecondary institutions from asking about or considering an applicant’s primary and secondary school disciplinary records during the admissions process would mitigate the discipline disparities that pervade K-12 education. These disparities are particularly stark in Maryland. Here, Black students are roughly three times more likely to experience exclusionary discipline¹ than White students, despite the population ratios of Black and White students being the same.² In the 2022-2023 school year, Black students comprised about 33% of the total enrollment in Maryland’s public schools, but represented approximately 60% of out-of-school suspensions and expulsions.³ In stark contrast, while White students also made up approximately 33% of the state’s total enrollment, they represented only 21.19% of out-of-school suspensions and expulsions.⁴

Similar discipline disparities exist throughout the United States. Nationally, Black students are almost twice as likely to receive a suspension or expulsion than White students for the same misbehavior.⁵ Like Black boys, Black girls are overrepresented in

¹ Camila Cribb Fabersunne, et. al, *Exclusionary School Discipline and School Achievement for Middle and High School Students by Race and Ethnicity*, JAMA NETWORK OPEN (Oct. 20, 2023) (“Exclusionary school discipline...practices [are] defined as any discipline that removes students from their classroom or school environment...e.g., referrals, suspensions, and/or expulsions...”), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2810944>

² MARYLAND STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOL ENROLLMENT BY RACE/ETHNICITY AND GENDER AND NUMBER OF SCHOOLS, 1 (Sept. 30, 2022), https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023_Enrollment_ByRace_Ethnicity_Gender.pdf.

³ MD. STATE DEP’T. OF EDUC., SUSPENSIONS BY SCHOOL AND MAJOR OFFENSE CATEGORY OUT-OF-SCHOOL SUSPENSIONS AND EXPULSIONS MARYLAND PUBLIC SCHOOLS, 2022-2023, 6 (Nov. 2023), <https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2022-2023-MD-PS-Suspensions-By-School-and-Major-Offense-Category-Out-of-School-Suspensions-and-Expulsions.pdf>.

⁴ *Id.* at 6.

⁵ Johanna Lcoe & 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>.

suspensions and expulsions. In the 2020-21 school year—the most recent national data available—“Black girls were nearly two times more likely to receive one or more in-school suspensions, or more out-of-school suspensions, and expulsions, than White girls.”⁶ Likewise, students with disabilities often face stricter punishments than their peers.⁷ The intersectionality of race, gender, and disability means that some students are affected even more by the already-disparate application of school discipline.

These disparities cannot be explained by different rates of student misbehavior. Studies have shown that all students misbehave at roughly the same rate, regardless of their race or gender.⁸ Although poverty correlates with increases in disruption or behavioral disorders, those relationships are so small that they cannot explain the massive discipline gaps between White and Black children.⁹ Rather, research has proved that implicit bias, cultural stereotypes, and explicit prejudice explain why Black students are disciplined at much higher rates than White students.¹⁰ This is particularly true for “subjective” offenses, such as defiance, disrespect, or disruption.¹¹ Implicit biases, stereotypes, and prejudice saturate teacher and administrative decisions to discipline students for subjective offenses.¹² Teachers are more likely to refer Black students to the office for disciplinary action, even when they exhibit the same behavior as White students. Once Black students arrive in the principal’s office, they are more likely to receive a harsh punishment, such as an in-school suspension instead of detention.¹³

Enacting SB 61 would not only prevent these disparities from entering the higher education admissions process, but 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.¹⁴ This national momentum has also spread to law schools and state bar applications. Of the more than 40 states that make their state bar

⁶ U.S. DEP’T OF EDUC., OFFICE FOR CIV. RTS., 2021-21 CIVIL RIGHTS DATA COLLECTION, STUDENT DISCIPLINE AND SCHOOL CLIMATE IN U.S. PUBLIC SCHOOLS, 7 (Nov. 2023), <https://www2.ed.gov/about/offices/list/oct/docs/crdc-discipline-school-climate-report.pdf>.

⁷ Lacoë & Manley, *supra* note 5, at 1.

⁸ 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).

⁹ 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>.

¹⁰ FINAL REPORT AND COLLABORATIVE ACTION PLAN, *supra* note 8, at 30.

¹¹ Erik J. Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 SCHOOL PSYCH. Q. 392, 401 (2016).

¹² FINAL REPORT AND COLLABORATIVE ACTION PLAN, *supra* note 8, at 29-30.

¹³ Lacoë & Manley, *supra* note 5, at 3-4.

¹⁴ 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>.

application questions public, we have identified only 9 state applications (including Maryland) that do not limit their question about academic and disciplinary violations to incidents occurred in postsecondary schools.

SB 61 will not fix the disparities in K-12 discipline. However, by passing SB 61, the Maryland General Assembly will ensure a more equitable review process for all applicants to Maryland institutions of higher education.

For these reasons, the Youth, Education, and Justice Clinic supports SB 61.

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.