

Testimony in Support of SB 61.pdf

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB61 - Higher Education - Disciplinary Records - Use in Admissions and Disciplinary Proceedings

It is evident that universities are factoring disciplinary records into admissions decisions and that these records can have negative consequences for these students seeking admittance. According to the Ballard Center, Minority students are more likely to face disciplinary actions than their white counterparts. As such, a disparity exists in college applications due to the fear of potential disqualification.

To address these issues, I am introducing SB 61, which will prevent the collection and use of high school disciplinary records from the admissions process in Maryland public universities and colleges.

Data from the Common Application, a standard application used by over 1000 colleges and universities nationwide, finds that among students who share their school disciplinary record, 22% do not complete their application. As a result of these findings, they removed their question regarding disciplinary history in 2021 to increase engagement with students of color and those from low-income backgrounds.

The U.S. Department of Education's Office for Civil Rights Data found that Black students are 3.5 times more likely to be suspended or expelled than white students. These racial biases at the high school level should not weigh in on a student's chances for admission to universities.

This body also passed "Ban the Box" legislation in 2019 (SB 839, or the Criminal Record Screening Processes), prohibiting colleges and universities that receive State funds from asking about an applicant's criminal history during the initial admissions process. Through SB 61, we are continuing this effort to increase racial equity and provide more opportunities for students of all backgrounds.

To encourage our students to grow from youthful mistakes, transitioning away from using disciplinary records in the admissions process is essential. This legislation will increase accessibility for all Maryland students to higher education, help close the school-to-prison pipeline, and stop deterring students from applying to college.

For these reasons, I respectfully request a favorable report on SB 61.

CRSD SB 61 TESTIMONY.docx.pdf

Uploaded by: Ariannwyn Carver

Position: FAV

MARYLAND COALITION TO REFORM SCHOOL DISCIPLINE

SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

SENATE BILL 61: HIGHER EDUCATION-DISCIPLINARY RECORDS-USE IN ADMISSIONS AND DISCIPLINARY PROCEEDINGS

DATE: JANUARY 24, 2024

POSITION: SUPPORT

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 supports Senate Bill 61**, which would prohibit an institution of higher education from using an admissions application that contains questions about an applicant's disciplinary record, except for questions relating to academic dishonesty.

Discipline disproportionately impacts Black and Brown K-12 students as well as students with disabilities. By prohibiting an institution of higher education from asking about an applicant's disciplinary record during the admissions process, SB 61 can prevent the disparities that exist in K-12 education from following a student to higher education.

Despite identical enrollment and misbehavior rates, Maryland schools are about three times as likely to use exclusionary discipline against Black students than white students.¹ For instance, in the 2022-2023 school year, Black students made up approximately 32.7% of the state's total student enrollment but 58% of the state's out-of-school suspensions and expulsions.² On the other hand, white students also made up approximately 32.9% of the state's total student enrollment but represented only 21% of the state's out-of-school suspensions and expulsions.³ Students with disabilities are also twice as likely to be suspended or expelled than their non-disabled peers.⁴

¹ See Maryland State Department of Education, Suspensions by School and Major Offense Category, Out-of-School Suspensions and Expulsions, Maryland Public Schools 2022-2023 (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?_sm_nck=1; see also Maryland Commission on the School-to-Prison Pipeline and Restorative Practices Final Report and Collaborative Action Plan (Dec. 2018), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>.

² *Id.*

³ *Id.*

⁴ Johanna Lacoë and Mikia Manley, *Disproportionality in school discipline: An assessment in Maryland through 2018*, Regional Educational Laboratory (Sept. 2019), <https://files.eric.ed.gov/fulltext/ED598820.pdf>.

Such disparities cannot be explained by different rates of student misbehavior, as studies have shown that all students misbehave at roughly the same rate.⁵ While poverty is correlated with increases in disruption and behavioral disorders, those relationships do not explain the great discipline gap between white and Black children.⁶ The discipline gap remains even when all other variables are removed. For the same infraction in similar circumstances, a white student is significantly less likely to be disciplined than a Black peer.

Research shows that implicit bias, cultural stereotypes, and explicit prejudice explain why Black and Brown students are disciplined at much higher rates than white students.⁷ This is all the more true for subjective offenses like disrespect, defiance, or disruption.⁸ Maryland data shows the real life impact of this – in the 2022-23 school year, approximately 54% of the out-of-school suspensions and expulsions for disrespect or disruption were imposed on Black students.⁹

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 in the office, Black students are more likely to receive a harsher punishment.¹⁰

Disciplinary records are a major piece of the school-to-prison pipeline. These records brand students much like criminal records and prevent them from accessing opportunities to improve their own lives. SB 61 will dismantle this part of the pipeline and help give students a chance to rise above the mistakes they have made in the past.

Though SB 61 will not fix the problems that exist in K-12 discipline, it will ensure a more equitable review process for all applicants to Maryland's institutions of higher education. By passing SB 61, 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, CRSD **strongly supports SB 61.**

⁵ *Maryland Commission on the School-to-Prison Pipeline and Restorative Practices Final Report and Collaborative Action Plan* (Dec. 2018),

<https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>.

⁶ Nathan Barrett et al., *Technical Report: Disparities in Student Discipline by Race and Family Income*, Education Research Alliance for New Orleans (Jan. 2018),

<https://educationresearchalliancenola.org/files/publications/010418-Barrett-McEachin-Mills-Valant-Disparities-in-Student-Discipline-by-Race-and-Family-Income.pdf>.

⁷ *Maryland Commission on the School-to-Prison Pipeline and Restorative Practices Final Report and Collaborative Action Plan* (Dec. 2018),

<https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>; 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).

⁸ Erik J. Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 *School Psych. Q.* 400-402 (2016).

⁹ Maryland State Department of Education, *Suspensions by School and Major Offense Category, Out-of-School Suspensions and Expulsions, Maryland Public Schools 2022-2023* (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?_sm_nck=1.

¹⁰ Johanna Lacoë and Mikia Manley, *Disproportionality in school discipline: An assessment in Maryland through 2018*, Regional Educational Laboratory (Sept. 2019), <https://files.eric.ed.gov/fulltext/ED598820.pdf>.

For more information contact:

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CRSD Members

Sayra and Neil Meyerhoff Center for Families, Children and the Courts

Disability Rights Maryland

League of Women Voters of Maryland

The Choice Program at UMBC

Strong Schools Maryland

Maryland Office of the Public Defender

Project HEAL (Health, Education, Advocacy, and Law) at Kennedy Krieger

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

Office of the Public Defender

Strong Schools Maryland

Camila Reynolds-Dominguez, FreeState Justice

Public Justice Center

ACLU of Maryland

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Position: FAV

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.

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Uploaded by: Candace Caraco

Position: FWA



**Education, Energy, and the Environment Committee
Senate Bill 61**

**Higher Education - Disciplinary Records - Use in Admissions and Disciplinary Proceedings
Wednesday, January 24, 2024
Favorable with Amendments**

Chair Feldman, Vice Chair Kagan and members of the committee, thank you for the opportunity to offer testimony on Senate Bill 61.

The University System of Maryland (USM) is comprised of twelve distinguished institutions, and three regional centers. We award eight out of every ten bachelor's degrees in the State. Each of USM's 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from Western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes three Historically Black Institutions, comprehensive institutions and research universities, and the country's largest public online institution.

The USM institutions do not disqualify an applicant just because of the existence of a disciplinary record, so the USM supports the intent of this bill. Admissions personnel recognize that these records from a student's past can bear the traces of bias and could unfairly disadvantage students. Further, while a similar bill last year precluded the use of all discipline records, SB 61 precludes the use of disciplinary records from primary and secondary schools.

Senate Bill 61 allows institutions to make inquiries into and consider a student's disciplinary record for discipline related to academic dishonesty. However, the bill does not allow inquiries into the record for purposes of making decisions about access to campus residency or offering supportive counseling or services. Such inquiries can be made for people who have a criminal history and they should also be allowed for students with disciplinary records. It is extremely rare when a discipline record would impact a decision about residency, but when it happens, the situation has been deemed by professionals to carry serious risk either for the student or other students or staff.

A more common situation is that inquiry into a discipline record leads to better understanding of challenges that a student has had—and that enhanced understanding could help campus professionals assist the student's transition into, and general success in, college. There are a number of different kinds of situations that could lead a student with some kind of distress to behave in a manner that led to a disciplinary record. The concern in this instance is the student's welfare, particularly if the student is going to be living away from home. The transition to college

life can be challenging and the more information USM institutions are provided, the more supports can be in place before the students is on campus.

We recommend amending 26-504(a) (line 24) so that “a student’s criminal history OR DISCIPLINARY RECORD” can be considered for decisions about access to campus residency or for offering supportive counseling. This change suggests that 26-504(a)(2) could also be amended so that the text after “or” pertains only to those with a criminal record.

Thank you for considering what we believe is an important amendment to the bill.



EACtestimonySB61.pdf

Uploaded by: Leslie Margolis

Position: FWA

Education Advocacy Coalition

for Students with Disabilities

SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

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

DATE: JANUARY 24, 2024

POSITION: SUPPORT WITH AMENDMENTS

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of more than 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, provides this testimony in support of Senate Bill 61 with amendments. Senate Bill 61 would prohibit an institution of higher education from using an admissions application that contains questions about an applicant's disciplinary record, except for questions relating to academic dishonesty.

The EAC supports increasing access to higher education for students with disabilities. Senate Bill 61 would increase access of students with disabilities to higher education by minimizing the impact their disciplinary record can have on the admissions process. Exclusionary discipline is a practice that affects students with disabilities at a greater rate and disproportionately when compared to their nondisabled peers. Students with disabilities are twice as likely to be suspended or expelled than their non-disabled peers. Additionally, in 2022, students with disabilities made up 12% of the student population in Maryland¹, but accounted for 26% of suspensions in the state.²

While the EAC supports a prohibition on the use of admission applications that contain questions about an applicant's disciplinary record, Senate Bill 61 does not go far enough to prohibit the use of questions relating to disciplinary records in the higher education admissions process. For instance, college admissions applications may include questions that ask if a student has changed schools during their educational career. In response to this question, a student would have to disclose if they have been expelled or otherwise removed from their school. Thereby, institutions of higher education would still be able to inquire into a student's disciplinary record while not asking directly for a student to disclose whether they had been disciplined. This could be addressed by amending the bill to prohibit such questions.

Furthermore, the EAC believes that the exception regarding questions relating to academic dishonesty should be removed. In furthering greater access to higher education, disciplinary infractions for academic dishonesty for which the student likely already faced disciplinary action should not be allowed to limit the student's future.

¹ Maryland State Board of Education, *Data Deep Dive: Students with Disabilities*, p. 4 (Feb. 2023), https://marylandpublicschools.org/stateboard/Documents/2023/0228/DeepDiveStudentsWithDisabilitiesPart2.pdf?sm_nck=1.

² Maryland State Department of Education, *Suspensions By School and Major Offense Category: Out-of-School Suspensions and Expulsions in Maryland Public Schools 2022-2023*, p. 6 (Nov. 2023), https://marylandpublicschools.org/stateboard/Documents/2023/0228/DeepDiveStudentsWithDisabilitiesPart2.pdf?sm_nck=1.

Although Senate Bill 61 would not fix the problems that exist in K-12 discipline, it would ensure a more equitable review process for all applicants to Maryland's institutions of higher education. Enactment of Senate Bill 61 would help ensure that the inequitable disciplinary practices that affect students across the state do not negatively impact their futures.

For these reasons, the EAC supports Senate Bill 61 with amendments.

Please contact Annie Carver, EAC legislative committee chairperson, at carverar@kennedykrieger.org or 518-763-4886 with any questions.

Respectfully submitted,

Rene Averitt-Sanzone, The Parents' Place of Maryland
Linda Barton, MSED Education Consultant
Elizabeth Benevides, Autism Society of Maryland
Melanie Carlos, xMinds (Partnership for Extraordinary Minds)
Rich Ceruolo, Parent Advocacy Consortium
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Alyssa Fieo, Office of the Public Defender
Jennifer Engel Fisher, Weinfeld Education Group
Riya Gupta, Strong Schools Maryland
Kalman Hettleman, Independent Advocate
Nicole Joseph and Kate Rabb, Law Offices of Nicole Joseph
Rosemary Kitzinger and Marjorie Guldan, Bright Futures, LLC
Ande Kolp, The Arc Maryland
Mallory Legg, Annie Carver, Tyler Cochran, Project HEAL at Kennedy Krieger Institute
Rachel London, Maryland Developmental Disabilities Council
Leslie Seid Margolis, Disability Rights Maryland
Ronza Othman, National Federation of the Blind of Maryland
Camila Reynolds-Dominguez, FreeState Justice
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Jessica Williams, Education Due Process Solutions, LLC
Liz Zogby, Maryland Down Syndrome Advocacy Coalition