

**HOUSE WAYS AND MEANS
SENATE BILL 1145
PUBLIC and NONPUBLIC SCHOOLS – CHILD SEX OFFENDERS –
PROHIBITION ON IN-PERSON ATTENDANCE**

MARCH 27, 2024

POSITION: OPPOSE

Local and national civil rights groups are deeply alarmed about the potential passage of Senate Bill (SB) 1145. We are writing to urgently request your opposition to this bill, which, if enacted, would prohibit a child from in-person attendance at a public school or a nonpublic school that receives State funds if the child has been convicted or adjudicated delinquent of rape or other sexual offenses. SB1145 would have detrimental impacts on children, raises serious due process concerns, and runs afoul of the rights of students with disabilities under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). We urge you to consider the following points and oppose this bill in your decision-making process:

Violation of IDEA, Section 504, ADA Rights: SB 1145 directly contravenes the requirements and principles of the IDEA, which mandate that children with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE), as well as Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against individuals with disabilities in programs receiving federal financial assistance. Excluding these children from in-person schooling without individualized review and due process and requiring them to attend alternative education at home either through virtual learning or home and hospital instruction undermines their fundamental right to education in the least restrictive environment and violates their rights to non-discrimination and reasonable accommodations under Section 504 and the Americans with Disabilities Act.

Existing Safeguards: Maryland's current reportable offense statute and regulations, Md. Code, Educ. § 7-303, already provides robust safeguards to address safety concerns while ensuring that children with disabilities are not unfairly deprived of their educational opportunities. These mechanisms allow for case-by-case evaluations and alternative placements if deemed necessary, maintaining a balance between safety and educational rights.

Due Process Concerns: Creating a blanket prohibition of in-person attendance, as SB 1145 proposes, raises significant due process concerns. SB 1145 provides no process to evaluate whether a threat actually exists based on facts to support a need to exclude a student from in-person school; the bill does not build in any opportunity for appeal, and most notably, there is no review process or end date for the exclusion from in-person school attendance. As the United States Supreme Court noted in *Goss v. Lopez*,¹ students have a property interest in

¹ 419 U.S. 565 (1975).

education which cannot be denied without adequate due process. Since a juvenile court has determined that the students targeted by this bill are safe to be in the community, the Legislature cannot then, by broad sweeping edict, deny education without due process. In contrast, the reportable offense statute discussed above provides a level of due process which is required before the right to full education services in a student's regular school program can be denied.

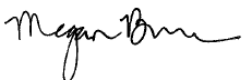
Risk of Isolation, Harm, and Long-Term Consequences: Lack of in-person school attendance can lead to the isolation of children, depriving them of crucial social interactions, support services, and academic progress. This isolation increases the risk of mental health concerns, hinders their overall development, and creates a stigma for the child regarding their inability to attend in-person school. Excluding children with disabilities from in-person schooling without individualized consideration of their needs and circumstances can have long-lasting detrimental effects on their educational outcomes, social integration, and overall well-being.

Moreover, SB 1145 denies children the number one protective factor in preventing youth from recidivism: education. Relegating children to an indefinite placement in a virtual school program or home and hospital instruction (which requires a minimum of six hours a week of instruction and seldom amounts to more than 10 hours a week) isolates students and precludes critical educational opportunities that go beyond course subjects. During the pandemic, we learned that virtual school is an inferior form of education, especially for youth with learning disabilities or other educational deficits, and created an ongoing mental health crisis.

SB 1145 is a shocking denial of the most basic rights of a child. We urge you to prioritize the legal rights and educational needs of children and oppose SB 1145. Thank you for your attention to this critical matter.

For more information, please contact Megan Berger at Disability Rights Maryland:
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Sincerely,



Disability Rights Maryland

Maryland Office of the Public Defender

The Legal Aid Justice Center

Public Justice Center

ACLU of Maryland

The Advocacy Institute

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

Youth Justice and Education Clinic, Center for Juvenile Law and Policy, Loyola Law School

Georgetown Juvenile Justice Initiative

Council of Parent Attorneys and Advocates

Juvenile Law Center

National Disability Rights Network

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Disability Rights New Mexico

The Gault Center

Center for Children's Law and Policy

National Youth Justice Network

Sayra and Neil Meyerhoff Center for Families, Children and the Courts, University of Baltimore School of Law

Center for Criminal Justice Reform, University of Baltimore School of Law

Advance Maryland

The League of Women Voters of Maryland

Utah Juvenile Defender Attorneys

The Sentencing Project