

Testimony Concerning Senate Bill 386
Primary and Secondary Education – Definition and Notification of Reportable
Offense - Alternations
Position: Unfavorable

To: Senator Brian J. Feldman, Chair
Senator Cheryl C. Kagin, Vice Chair
Members of the Education, Energy, and the Environment Committee

From: Monique L. Dixon, Executive Director and Michael Pinard, Faculty Director, Gibson-Banks Center for Race and the Law

Date: February 10, 2025

On behalf of the Gibson-Banks Center for Race and the Law (“Gibson-Banks Center”) at the University of Maryland Francis King Carey School of Law,¹ we appreciate the opportunity to submit testimony raising concerns about Senate Bill 386 (SB 386), which would amend Maryland’s education article by removing from the definition of reportable offenses the requirement that the offense occurred off school premises and did not occur at a school sponsored event. SB 386 would also require the Maryland Department of Juvenile Services (DJS) to notify certain school officials of its decision to informally resolve a complaint involving or not file a petition against a student for a reportable offense.

The Gibson-Banks Center works collaboratively to transform institutions and systems of racial inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Center examines and addresses racial inequality, including the intersection of race with sex or disability, and advances racial justice in a variety of issue areas, including the education and criminal legal systems.

We respectfully urge you to issue an unfavorable report for SB 386 for several reasons. First, if the intent of the bill is to require law enforcement to notify school officials of students arrested for reportable offenses that occur on and off school grounds, current law already provides for both scenarios. Second, SB 386’s proposed requirement that DJS notify schools of its decision to informally resolve a complaint against a student involving a reportable offense or

¹ This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

deny authorization to file a petition for the reportable offense should result in the student remaining in or returning to their regular education program. Doing so will ensure that these students have equal access to educational opportunities.

SB 386 needlessly duplicates state law & regulations.

Maryland education officials have a legal obligation to maintain safe schools and ensure that all students have equal access to educational opportunities. These responsibilities are not mutually exclusive. Maryland policymakers have already passed legislation and issued implementing regulations and policies that attempt to balance both legal obligations when students are arrested for offenses that occur on and off school grounds.

For example, section 7-305 of the Maryland Education Code provides a process by which schools may suspend or expel students from school consistent with the rules and regulations of county boards of education.² County boards of education have student codes of conduct that specify when a student may receive an out-of-school suspension or expulsion for code of conduct violations, including conduct that rise to the level of criminal offenses, such as firearm possession, attack on student or staff, and drug distribution, to name a few.³ Section 13A.08.01.12 of the Code of Maryland Regulations (COMAR) details the process law enforcement officers should follow when arresting students on school grounds during school and non-school hours. This provision also requires county boards of education to report all arrests data to the Maryland State Department of Education.⁴

Additionally, section 7-303 of the Maryland education article requires law enforcement agencies to timely and confidentially notify school officials of the arrest of and charge(s) filed against students for a reportable offense, including crimes of violence, that occur off school grounds and not at a school-sponsored event.⁵ Upon receipt of this information, the school principal, in consultation with appropriate school staff, must consider whether the student's in-person school attendance "presents a risk to the safety of other students and staff."⁶

If the school principal believes the student presents a safety risk, then the principal must immediately work with the student, the student's parent or guardian, and the student's attorney (if the student has legal representation) to develop a plan that both provides for appropriate educational programming and services for the student and maintains a safe learning environment

² MD. CODE ANN, EDUC. §7-305.

³ See, e.g., Frederick County Public Schools, *FCPS Parent/Student Handbook and Student Code of Conduct 2024-2025*, https://campussuite-storage.s3.amazonaws.com/prod/33903/86de7fb0-3a18-11e6-b537-22000bd8490f/2827006/559592f4-5579-11ef-aabf-0a58a9feac02/file/StudentCodeofConduct_2024-25.pdf; and Baltimore City Public Schools, 2024-2025 Student Code of Conduct, https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/3843/BCPS/4600805/Code_Of_Conduct_Book_2024_25_ENG.pdf.

⁴ See, COMAR 13A.08.01.12. See also, Maryland State Department of Education, Maryland Public Schools Student Arrest Data School Year 2022 – 2023 Annual Report (April 2024), <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20222023-A.pdf>.

⁵ MD. CODE ANN, EDUC. §7-303(b).

⁶ See, COMAR 13A.08.01.17.C(2).

for all students.⁷ This plan may include removing the student from a regular school program, but only after an individualized educational and safety assessment is performed.⁸ Notably, this assessment is required because Maryland law makes clear that a reportable offense cannot be the *sole* basis for excluding a student from traditional in-person education.⁹

SB 386, which amends the reportable offenses provisions of Maryland’s education article to require law enforcement to report to schools crimes that students allegedly commit on and off school grounds, needlessly duplicates current law.

SB 386’s requirement that DJS notify schools when it informally resolves a complaint or denies authorization to file a petition against a student arrested for a reportable offense should result in the student remaining in or returning to their regular school program.

The notification of reportable offenses provision of Maryland’s education article is intended to give schools the information they need to make any adjustments to the education program of the student who is arrested, bearing in mind the student’s educational needs and the safety of other students and staff.¹⁰ If DJS decides to informally resolve a complaint or not to file a petition against a student charged with a reportable offense, then presumably the agency has determined that the student does not pose an imminent safety threat; therefore, these students should return to their regular education program to ensure that all students have equal access to educational opportunities.¹¹

We are concerned that the implementation of SB 386 may result in certain students being denied equal access to educational opportunities in violation of federal nondiscrimination laws. Federal civil rights laws prohibit discrimination based on race, color, or national origin,¹² sex,¹³ or disability¹⁴ under any program or activity that receives federal financial assistance. State and

⁷ See, COMAR 13A.08.01.17.C(3) – (5).

⁸ See, COMAR 13A.08.01.17.D.

⁹ See, COMAR 13A.08.01.17.D(2).

¹⁰ See, MD. CODE ANN, EDUC. §7-303(f)(1). See also, COMAR 13A.08.01.17.C.

¹¹ See, Dep’t of Legislative Services Maryland General Assembly, *Racial Impact Note, Session 2025, SB 386, Primary and Secondary Education - Definition and Notification of Reportable Offense – Alterations*, 4 (stating “[t]he bill’s notification requirement for DJS to notify school officials of certain post-arrest outcomes for reportable offense arrests would benefit the affected students by allowing a faster return to regular school programming in those cases where an arrested student is not referred to formal proceedings. Black students, in particular, may be impacted to the greatest extent as they make up a substantially large portion of reportable offense arrests as well as arrests on campus. The specific impacts, however, cannot be determined without more longitudinal data on arrest outcome.”),

<https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2025RS-SB0386-REIN.pdf>.

¹² See, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* (stating “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

¹³ See, Title IX of the Education Amendments of 1972, 20 U.S.C §1681, *et seq.* (stating “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”).

¹⁴ See, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (stating “[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

local school systems and schools that receive federal funds must comply with these nondiscrimination laws. For example, school systems and schools must carry out student removals from education programs for disciplinary/safety purposes in a nondiscriminatory manner.¹⁵

Data collected by the Maryland State Department of Education show that Black students (57%), students of two or more races (8%), and boys (62%) were overrepresented among the 1,568 students arrested at schools statewide during the 2022-2023,¹⁶ the most recent school year for which data are available, when compared to their representation in the statewide student population (33%, 5% , and 51% respectively).¹⁷ Of the 1,568 students arrested at schools, 1,389 (88%) received an out-of-school suspension in conjunction with the arrest.¹⁸

Additionally, data about the number of students arrested for reportable offenses that occurred off school grounds show that Black students, students of two or more races, boys, and students with disabilities were overrepresented. Specifically, during the 2023-24 school year

- Black students and students of two or more races comprised 65% and 9% of students arrested for reportable offenses incidents¹⁹ even though they represented only 33% and 5% of the statewide student population that school year.²⁰
- Boys represented 73% of students arrested for reportable offenses incidents,²¹ but 51% of the statewide student population.²²

Federal financial assistance.”). *See also*, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (prohibiting disability discrimination by State and local governments, regardless of whether they receive federal funds).

¹⁵ *See generally*, Office for Civil Rights, U.S. Department of Education and Civil Rights Division, U.S. Department of Justice, *Resource on Confronting Racial Discrimination in Student Discipline* (May 26, 2023), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/tvi-student-discipline-resource-202305.pdf>. *See also*, Office for Civil Rights, U.S. Department of Education, *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*, 27-32 (July 19, 2022), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf>.

¹⁶ Maryland State Department of Education, *Maryland Public Schools Student Arrest Data School Year 2022 – 2023, Annual Report* (Maryland Public Schools Arrest Data), 1-3. 125-127 (April 2024), <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20222023-A.pdf>.

¹⁷ Maryland State Department of Education, *Maryland State 2022-2023 School Report Card, Demographics/Enrollment* (2023), <https://reportcard.msde.maryland.gov/Graphs/#/Demographics/Enrollment/3/17/6/99/XXXX/2023>.

¹⁸ Maryland Public Schools Arrest Data, *supra* note 16, at 4.

¹⁹ *See*, Maryland State Department of Education, *Reportable Offenses Data: Maryland Public Schools, School Year 2023-2024*, 10 & 18 (December 30, 2024), [https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303\(j\)_2024.pdf](https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303(j)_2024.pdf), [hereafter, *School Year 2023-2024 Reportable Offenses Data*].

²⁰ *See*, Maryland State Department of Education, *Maryland State 2023-2024 School Report Card, Demographics/Enrollment* (2024), <https://reportcard.msde.maryland.gov/Graphs/#/Demographics/Enrollment/3/17/6/99/XXXX/2024>, [hereafter, *Maryland State 2023-2024 School Report Card*].

²¹ *School Year 2023-2024 Reportable Offenses Data*, *supra* note 19, at 10 & 19.

²² *Maryland State 2023-2024 School Report Card*, *supra* note 20.

- Students with disabilities represented 39% of students arrested for reportable offenses incidents,²³ but 13% of the statewide student population.²⁴

Some schools or school districts removed students from or changed their regular school program after determining that they presented an immediate safety risk to students or staff.²⁵ Again, as detailed above, these exclusions were based on individualized assessments that considered the interests of the individual student and the school.

Although data about the number of students who received a suspension in conjunction with an arrest made on school grounds and data on student arrests for reportable offenses committed off school grounds that resulted in removal from or a change of students' regular education program are not disaggregated by race, sex, or disability, the overrepresentation of students of color, boys, and students with disabilities who were arrested on and off school grounds is concerning. And, while the overrepresentation of certain student groups alone does not violate federal nondiscrimination laws, these statistics should cause Maryland school officials to examine student arrests that resulted in the removal of students to ensure that schools are complying with their nondiscrimination obligations.

To ensure that all students have equal access to educational opportunities, regardless of race and other characteristics protected by federal nondiscrimination laws, any notification from DJS to schools indicating that the agency has not formally filed a petition against students arrested for reportable offenses should result in students remaining in or returning to their regular education programs.²⁶

For the above reasons, we urge the Education, Energy, and the Environment Committee to issue an unfavorable report for SB 386.

²³ *School Year 2023-2024 Reportable Offenses Data*, *supra* note 19, at 10 & 20.

²⁴ Maryland State Department of Education, *Maryland State 2023-2024 School Report Card, Demographics/Enrollment, Student Group Populations* (2024), <https://reportcard.msde.maryland.gov/Graphs/#/Demographics/StudentPopulation/1/1/99/XXXX/2024>.

²⁵ *School Year 2023-2024 Reportable Offenses Data*, *supra* note 19, at 23-25.

²⁶ *See, supra* note 11 and accompanying text.