

Education Advocacy Coalition

for Students with Disabilities

JUDICIAL PROCEEDINGS AND EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEES

SENATE BILL 78: Juvenile Child Sex Offenders—Juvenile Sex Offender Registry and Prohibition on in-Person Attendance

DATE: January 28, 2025

POSITION: OPPOSE

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of nearly 50 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly opposes Senate Bill 78, which would deny in-person education to students who have been adjudicated or convicted of rape or a sexual offense that, if committed by an adult, would constitute a felony. In addition to constituting bad policy, the bill raises a host of due process concerns and, for students with disabilities, represents a significant violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401 *et seq.*, and corresponding Maryland law. Passage of Senate Bill 78 will likely lead to litigation.

Compelling testimony has been submitted by others explaining the low recidivism rates for children adjudicated for a sex offense and the effectiveness of treatment and of the importance of school attendance for these children and youth. This Committee has also received extensive testimony explaining the safeguards already in place to address safety concerns through the reportable offense statute, Md. Code, Educ. §7-303, and the fact that this bill contains no due process procedures, a fatal flaw, given the United States Supreme Court's 1975 decision in *Goss v. Lopez* that students have a property interest in education that cannot be denied without due process. Senate Bill 78 provides no process for determining if a student actually poses a threat, has no review or appeal process, and no end date for the student's exclusion from in person school attendance. Because these issues have been addressed at length by others who have submitted testimony, the EAC's testimony will focus on Senate Bill 78's violation of the IDEA with respect to students with disabilities.

The IDEA, its implementing regulations, and corresponding Maryland law and regulations mandate that students with disabilities receive a free appropriate public education comprised of specialized instruction, related services, and supplementary aids and services and programmatic modifications and supports. These services and supports are identified and provided through a process that requires consideration of the student's individualized needs as described in the Individualized Education Program (IEP) required for every student receiving special education. One of the most fundamental principles of the IDEA is that each student is an individual whose needs must be evaluated and addressed in an individualized manner. Making assumptions about students based on factors such as their behavior, their identified disability, their mode of communication or other characteristics violates not only the IDEA but

also Section 504 of the Rehabilitation Act, 20 U.S.C. §794 *et seq.* and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, both of which prohibit discrimination against people with disabilities based on assumptions or beliefs. By imposing a blanket requirement that all children and youth who have been adjudicated or convicted of a sex offense be prohibited from attending in-person public or nonpublic schools, Senate Bill 78 feeds into the most dangerous assumptions about students with disabilities and fails to recognize that each student must be considered as an individual.

Senate Bill 78 also violates the basic requirement of the IDEA and Maryland law that students be educated in the least restrictive environment in which their IEPs can be implemented. These laws presume that students with disabilities will be educated with their nondisabled peers to the maximum extent appropriate, and that unless their IEPs require some other arrangement, they will attend the school they would attend if they did not have a disability. Senate Bill 78 completely ignores this federal mandate by removing students wholesale from their schools, regardless of what their IEPs mandate. The alternative educational options allowed under Senate Bill 78 must align with the options permitted by Section 11-722(E) of the Criminal Procedure Article; these options include home and hospital instruction, attendance at a Regional Institute for Children and Adolescents, virtual instruction, or a nonpublic school if the school permits the student to attend. However, Senate Bill 78 prohibits attendance at a public school or a nonpublic school that receives state funds. Therefore, the RICA schools and the nonpublic schools, which are special education schools receiving a combination of state and local funds, would not be permissible under Senate Bill 78, leaving students with only two options: Home and hospital instruction or virtual education. Home and hospital instruction is a time-limited, highly restrictive mode of instruction intended for students in emotional crisis or students unable to attend school because of a physical illness or condition. Students receiving home and hospital instruction generally receive six hours per week of education from a teacher who may or may not be certified in special education and generally are unable to receive full implementation of their IEPs. Virtual instruction was particularly devastating for many students with disabilities during the Covid-19 pandemic; EAC members currently are grappling with an overuse of virtual instruction by school systems as a way of bypassing the discipline procedures in place for students with disabilities. Passage of Senate Bill 78 would inevitably lead to an increased number of due process hearings and to legal challenges.

For these reasons, the EAC strongly opposes Senate Bill 78. To discuss or if questions, please contact Leslie Seid Margolis, Co-Chairperson, at lesliem@disabilityrightsmd.org or 443-692-2505.

Education Advocacy Coalition testimony in opposition to Senate Bill 78

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