

HOUSE JUDICIARY COMMITTEE

House Bill 638 – Juvenile– Sexual Offenses—Registration and Reporting Requirements

February 26, 2025

POSITION: OPPOSE

Disability Rights Maryland (DRM), a non-profit legal advocacy organization, is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. We have been serving children, youth, and adults with disabilities in our state for over 40 years. DRM is a leader in Maryland's educational advocacy community, working on issues such as school discipline, special education, and restraint and seclusion. DRM has significant experience representing students with disabilities statewide who have been suspended or expelled from school or are involved in the juvenile justice system.

DRM opposes HB 638 because it expands the number of students who will unilaterally be removed from in-person school and whose special education rights will be violated. DRM is mandated to defend the civil rights of *all* students with disabilities, which includes their education rights, and this bill erodes those rights. Students with disabilities can be both the victims and the actors in sexual offense cases and are sometimes both. When legislating, it is imperative that the rights of all students be considered and that the implications for all students be analyzed. School safety is of the utmost importance for all children, but it can be achieved without the erosion of federally enshrined special education rights, the erosion of which starts a slippery slope upon which we now find ourselves.

During the 2024 legislative session, with House Bill 814, the legislature took the extreme step of prohibiting children on the nonpublic juvenile sex offender registry from attending public schools in person. See Md. Code, Crim. Pro. § 11-722(c). HB 638 goes *even further* by ensuring that a student is *permanently banned* from attending school in person even where a court has terminated jurisdiction after determining that the student is safe to be in the community and has met their treatment goals and the requirements of the court. This is the slippery slope. DRM sounded the alarm for HB 814 last year, raising concerns about its illegal stripping of federal special education rights, and we again sound the alarm with HB 638, which is unnecessarily expansive and reaches to exclude even more students from in-person school. Under HB 638, a child with a disability (autism, ADHD, intellectual disability, learning disability) and an IEP could be unilaterally removed from in-person school and forced to attend virtual school or some other highly restrictive alternative through the child's 21st birthday. This is a flagrant violation of federal special education law and denies the student a free appropriate public education in the least restrictive environment.

For students with disabilities, the hallmark of federal special education law is an individualized approach by the IEP team in assessing the student's needs and determining how and where the student will

receive a free appropriate public education in the least restrictive environment. Placement decisions must be individualized. HB 638 takes this critical responsibility away from the IEP team by permanently bootstrapping the placement decision for a child with a disability to the juvenile registry. This harms children and violates their rights.

We urge you to consider the following points in your decision-making process and oppose this bill:

Violation of IDEA, Section 504, ADA Rights: HB 638 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. Unilaterally 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 or at a RICA 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 (Md. Code, Educ. § 7-303) and regulations already provide robust safeguards to address safety concerns while ensuring that children with disabilities are not unfairly and illegally deprived of their educational opportunities. The reportable offense statute and regulations allow for individualized, case-by-case evaluations and alternative placements if deemed necessary, maintaining a balance between school safety and educational rights.

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, HB 638 denies children the number one protective factor in preventing youth from recidivism: education. Relegating children to an indefinite placement in a virtual school program, RICA 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.

We urge you to prioritize the legal rights and educational needs of children with disabilities and oppose HB 638. We must stop the slippery slope and gradual erosion of our students' special education rights.

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