

BILL: House Bill 649
TITLE: Advancing Equal Educational Opportunities for All Students in Maryland
HEARING DATE: April 1, 2026
POSITION: Letter of Information
COMMITTEE: Senate Education, Energy, and the Environment Committee
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The Maryland Association of Boards of Education (MABE), representing all of the State's local boards of education, **provides this informational letter for House Bill 649 - Advancing Equal Educational Opportunities for All Students in Maryland.**

House Bill 649 is a sweeping change to antidiscrimination enforcement across the education sector, as it seeks to add education to the sectors subject to the Maryland Commission on Civil Rights' (MCCR) jurisdiction, which already includes commercial property, the workplace, and housing. As articulated by MCCR, part of the bill's intent is to offer a State-level analog to what has been available to public school students and higher education students through the U.S. Department of Education's Office for Civil Rights (OCR) enforcement of federal laws prohibiting discrimination.

While the intent of the bill is laudable, and while civil rights are immensely important, MABE is concerned that the bill was developed without meaningful engagement with public school systems. It is not clear that MCCR engaged with any public school systems on how such a framework would operate in practice, nor does the bill reflect local school system perspective and insight, despite schools' central role in maintaining nondiscriminatory programs, implementing legal requirements, ensuring federal compliance, and regularly interacting with OCR.

Most concerning, House Bill 649 creates a broad private right of action against educational institutions, including public school systems, for individuals alleging discrimination, which is a significant departure from current law. While MCCR may intend only to establish a State-level enforcement mechanism analogous to existing federal protections, the inclusion of a private right of action expands, rather than merely replicates, current law. **As explained in greater detail below, MABE respectfully requests removing the private right of action entirely from House Bill 649.**

As this bill is sweeping and significant, our testimony too is meant to address all aspects fairly and present our concerns as clearly as possible, given that the bill has not yet been amended and appears to have received only cursory review in the House. Our testimony thus needs a table of contents:

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- I. **House Bill 649 Creates a New Private Right of Action that Expands Liability Beyond Current Law. MABE Recommends Striking § 20-1013.1(B) (Page 8, Lines 16-19).**

When drafting this bill, MCCR attempted to hew closely to federal statutory language concerning discrimination enforcement. In doing so, MCCR included a right to bring a civil action in State court for alleged discriminatory educational practices under federal law. **This is a significant and problematic expansion of current law and should be removed.**

If enacted, HB 649 would place Maryland among the very few states to create a State-based civil action tied to federal education discrimination law. Effective January 2026, California enacted AB 715, establishing an Office of Civil Rights within its Department of Education. Pennsylvania is the only other state considering similar legislation. While leadership in civil rights is important, a state-by-state approach to interpreting federal civil rights laws risks creating inconsistent standards across jurisdictions. Over time, this could result in divergent interpretations of Title IX, Title VI, and other federal statutes, undermining the uniformity those laws are intended to provide.

More practically, by authorizing individuals to bring State court actions for alleged violations of federal law, the bill creates new avenues to sue school systems that do not currently exist. Even apart from IDEA administrative exhaustion (discussed at length in the

next section), the creation of a private right of action substantially increases litigation exposure for school systems.

Take, for example, the Title IX context. Consider a hypothetical situation where a school system receives an allegation of misconduct, places a staff member on administrative leave, and conducts a thorough investigation. At the conclusion of that process, the school system determines that the misconduct allegations are unsubstantiated, but families are still unsatisfied. In this situation, even where the school system follows proper procedures, a family that disagrees with that determination could allege an inadequate response and question evidence, credibility assessments, and the professional judgment of trained investigators.

HB 649 would create a pathway for these types of disputes to be brought into court. Disagreements over investigative findings, disciplinary outcomes, or the sufficiency of a school system's response would be far more likely to be framed as discrimination claims and then litigated instead of brought to MSDE or MCCR for an administrative adjudication. As a result, school systems may be required to defend investigations in court. In this situation, even where a school system ultimately prevails, the time, cost, and operational burden of litigation are significant, threatening, and divert resources from student services and educational programming.

Moreover, while certain monetary claims may be subject to statutory protections or insurance coverage, defense costs associated with injunctive or declaratory relieve actions are often not covered, requiring school systems to fund their defense directly. This exposure is compounded where school systems may also be responsible for attorney's fees, expert and witness costs, and court expenses in cases decided against them, resulting in public funds being used to satisfy litigation costs and judgments. Spending public education dollars on litigation defense raises legal and constitutional concerns.

II. House Bill 649 Would Significantly Disrupt a Decades-Long National Standard Under IDEA Requiring Administrative Exhaustion for Disputes Concerning Special Education by Permitting Immediate Direct Civil Actions.

The private right of action created in House Bill 649 is particularly disruptive in the context of disability-related claims. Under the Individuals with Disabilities Education Act (IDEA), families must exhaust administrative remedies before seeking relief in court. The Supreme Court of the United States has repeatedly reinforced this requirement, holding that when a complaint concerns the denial of a free appropriate public education, and relief is available under the IDEA, plaintiffs must first pursue IDEA's due process procedures before filing suit in court. *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023) (J. Gorsuch, 9-0 decision), citing *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017) (J.

Kagan, 8-0 decision). This structure reflects a deliberate choice to ensure that certain educational disputes are first addressed through a specialized, expert administrative process that efficiently develops an administrative record and provides early opportunities for resolution. Maryland has codified this process in law and regulations. See Md. Code. Ann., Educ. Art. § 8-413, COMAR 13A.05.01.

For decades, courts nationwide have required adherence to this administrative structure before litigation proceeds. ***HB 649 would allow parties to sidestep administrative review if ever they are dissatisfied with a school-level outcome. As such, it represents a significant structural shift, unlike anywhere in the country, and would materially increase litigation exposure for school systems.***

Such a sea change would require school systems to play defendant across a variety of forums. This too would require school systems to divert finite public resources toward civil litigation, including outside counsel, staff time, document production, and discovery, rather than resolving disputes through the specialized administrative process and using their limited resources to serve students.

It also creates an incentive to pursue claims in court earlier in the process, which can undermine early resolution and shift disputes into a more adversarial posture. The result is a reallocation of limited public resources toward litigation defense, with corresponding impacts on the resources available for direct student services and educational programming.

III. MCCR Intends for House Bill 649 to Allow Forum Shopping for the Benefit of Allegedly Aggrieved Families, and to the Detriment of Public School Systems.

As representatives from MCCR testified during the hearing in the House Government, Labor, and Elections Committee, an individual with a grievance would be able to select their forum. HB 649 effectively permits claims to proceed through multiple avenues in addition to the still-available OCR, including MSDE, MCCR, and civil court.

While this flexibility may benefit complainants, it imposes significant burdens on public school systems as defendants. Each forum carries different procedural rules, timelines, evidentiary standards, and potential remedies. School systems must respond to each accordingly. Forum selection also invites strategic filing in the venue perceived to be most advantageous. This can result in duplicative or overlapping proceedings arising from the same underlying facts; again, not for the agencies themselves, but for the school system defendants. School systems may be required to respond to the same allegation multiple times—through internal investigations, administrative processes, and civil litigation—each with distinct documentation, witness preparation, and evidentiary

demands. This is a real burden. Administrators, principals, teachers, and central office staff must divert time from their primary responsibilities to participate in interviews, prepare records, sit for depositions, and coordinate with counsel. These demands are particularly acute in complex cases involving extensive documentation or multiple witnesses.

Of course, civil litigation compounds this burden on school systems tremendously, as it introduces discovery obligations that are not present in administrative forums. Forum shopping, while potentially a benefit to an alleged aggrieved party, shifts limited public resources away from student services and educational programming and toward defending the same set of facts across multiple forums.

IV. Public Schools Are Already Subject to a State-Level Civil Rights Protection Framework Based on Legislation from 2022.

In 2022, the General Assembly passed House Bill 850 (Ch. 739), now codified in part under Education Article §§ 26-704 and 26-705. This legislation is commonly known as the law that required all boards of education to adopt a written antidiscrimination policy, but, importantly, it *also* provided students and families with a legal complaint and remedy process if they have been subject to discrimination in school systems.

House Bill 649 would repeal the entire complaint and remedy process enacted in 2022. That law had almost no time in effect and as such, we question the rationale for wholesale restructuring a civil rights complaint and litigation process that was in its nascent form in response to recent federal government changes. Civil rights protections were, and still are, actively part of the legal framework in Maryland.

To be sure, the existing regime set forth in Ed. Art. §§ 26-704 and 26-705 appears to provide the state with a meaningful enforcement framework. Within that framework, a student or family alleging discrimination in education may file a complaint with the State Superintendent and the school system must respond within 30 days. The law contemplates that the State Superintendent must mediate, which, in practice, means the case is referred to the Office of Administrative Hearings for mediation to reach a resolution. If no agreement is reached, MSDE issues a decision specifying actions needed to remedy or eliminate the discrimination. A school system that violates MSDE's order may be subject to funding withholding from the Comptroller in an amount decided by the State Superintendent. The parties may appeal MSDE's decision to be heard administratively, and, if that is not satisfactory, the parties may again appeal the administrative decision to the county circuit court.

Notably, this framework provides protections on the basis of race, color, national origin, ethnicity, ancestry, religion, sex, sexual orientation, gender identity, disability, age, and marital status. The current law does not expressly provide protection on the basis of *pregnancy* or *ancestry*, as HB 649 does, but those statuses could easily be added to the existing law.

Accordingly, as pertains to public school systems, we question whether creating a parallel enforcement structure with concurrent agency authority and immediate access to court will materially improve outcomes for students and families. The existing statutory framework already provides timelines, mediation, administrative adjudication, funding enforcement, and judicial review.

MABE is aware of a small number of complaints brought under the current law and would defer to MSDE for a full accounting, but based on our understanding, the framework appears capable of addressing alleged discrimination. **Before undertaking a wholesale restructuring, the State should identify specific gaps in the current system and determine whether targeted improvements, rather than replacement, would better serve students and families.**

V. Because a Stated Goal of MCCR is to Address a Perceived Gap in Federal Enforcement, and Federal Enforcement is Dependent on the Federal Administration, the Bill Should Expressly Sunset with Federal Elections.

Absent a sunset tied to changes in federal enforcement, the State risks creating duplicative and potentially competing federal and State oversight regimes. Because federal enforcement priorities shift with each administration, and this bill is expressly a response to the current federal administration, a permanent State overlay may outlast the conditions it is intended to address. Parallel systems can and do result in overlapping investigations, inconsistent interpretations, forum disputes, and increased litigation exposure.

They also carry measurable fiscal and operational costs. Administrators and educators must devote significant time to document production, interviews, preparation, and testimony across multiple forums. Even when school systems prevail, defense costs can exceed the cost of settlement, creating pressure to resolve claims rather than fully litigate them. These expenditures and disruptions inevitably divert resources from instruction and student services, without a clear indication that such duplication will remain necessary as federal enforcement priorities evolve and OCR ideally regains its staff and policy initiatives.

VI. House Bill 649 Leaves Questions Unaddressed That Should Be Answered Before Passing This Bill.

Again, while we support equal educational opportunity for all students and the protection of civil rights in our school systems, we have a few additional questions that we respectfully provide here, ideally to be answered by MSDE and MCCR, and for the General Assembly to respectfully consider when contemplating or amending this bill. These questions are not rhetorical; their answers reflect policy choices and impact school systems.

Rationale

- ***For public school systems, what enforcement limitation, if any, has MSDE identified under the existing framework in Education Article §§ 26-704 and 26-705?***
- Current law already authorizes MSDE to issue corrective orders and permits the Comptroller to withhold funds for noncompliance. What gap does this bill seek to remedy?
- What is the policy justification for conferring concurrent enforcement and investigative authority, including FERPA-related access, to MCCR?

Forum Shopping and Consistency

- ***What is the State’s interest in permitting an individual to forum shop between MSDE, MCCR, and civil court?***
- ***Has the bill considered the impact on school systems that calibrate their response to each of these forums differently – administrative hearings, MSDE investigations, MCCR Investigations, OCR investigations, and actions in court?***

Conclusion

Laws can make a statement and express public values. But laws do more than that. They create enforceable rights, expand governmental authority, impose compliance obligations, and in this case, this bill (if it becomes law) would have real fiscal and operational consequences for local school systems.

Before establishing a new enforcement structure, the State should carefully consider the practical effects: investigations, costs, staffing (at MCCR and school systems), and capacity to process and defend claims. These consequences are not theoretical. They shape how schools allocate limited resources and how educators spend their time. For that reason, any expansion of enforcement authority should be deliberate, data-informed, and narrowly tailored.