

BILL: House Bill 649
TITLE: Advancing Equal Educational Opportunities for All Students in Maryland
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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 would repeal the existing statutory framework for civil rights enforcement in schools, and replace it with a new framework that authorizes the Maryland Commission on Civil Rights (MCCR), concurrently with the Maryland State Department of Education (MSDE), to enforce the prohibition against discrimination and retaliation in school systems. The bill also concurrently authorizes a private right of action for individuals alleging discrimination in schools to bring civil lawsuits in court.

Introduction

House Bill 649 appears to be premised on rational concerns regarding the current capacity and posture of the federal government to enforce civil rights protections in public schools. The U.S. Department of Education, through its Office for Civil Rights (OCR), historically served as a primary federal enforcement agency for laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age in federally funded education programs. With the 2025 change in federal administration, the federal government's significant staffing reductions and priority shifts in civil rights enforcement have created uncertainty about the scope, speed, and consistency of OCR oversight and understandably, its impact on Maryland students.

We recognize that the General Assembly may wish to ensure that there is systemic relief where federal enforcement capacity is perceived to be diminished, and that students and families in Maryland continue to have meaningful avenues for relief. And we want to be clear that civil rights are immensely important; they are the essence of a just and fair society and, from an education perspective, they are the foundational safeguards to student access and opportunity.

At the same time, it is important to acknowledge that federal civil rights law remains in effect and Maryland already *has* a nascent State-level statutory civil rights enforcement

framework for school systems in Education Article §§ 26-704 and 26-705. And federal administrations come and go. For these reasons, any additional legislation that is meant to respond to the current federal posture should be grounded in a careful assessment of what specific gaps truly exist and whether existing State mechanisms already address perceived gaps, before creating a parallel or replacement enforcement structure.

In addition, if the General Assembly determines that expanded State-level enforcement authority is warranted in light of current federal conditions, that authority should be expressly time-limited and subject to mandatory review. A defined sunset provision would ensure that Maryland does not permanently institutionalize a parallel enforcement regime based on what may be a temporary federal posture.

Lastly, as MABE seeks to provide its timely testimony, we also understand that this bill will be undergoing several proposed amendments from MCCR and MSDE. MABE would appreciate being at the table to discuss any amendments, and of course, may change its position based on any substantive changes to the bill.

We share the following concerns and considerations:

Legislation from 2022 Created a New Civil Rights Protection Framework in Schools

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 best 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 does not touch the requirement for an antidiscrimination policy but 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.

The major differences between HB 649 and the current (and seemingly adequate) framework is that HB 649 would provide MCCR with concurrent enforcement power with MSDE, and that HB 649 would authorize individuals to sue a school system in court, even in the middle of having either MCCR or MSDE investigate and adjudicate the individual's complaint. We address specific concerns with the new right to civil action further below.

Accordingly, 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. We are 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. Restructuring this framework before it has had sufficient time to operate risks duplicative proceedings, inconsistent outcomes, and increased litigation costs without evidence that the current process is deficient.

Concerns with Piecemeal Civil Rights Enforcement

If the General Assembly were to pass HB 649, Maryland would be only the second state, on the coattails of California, to pass a law like this. Effective January 2026 (last month), California passed AB 715, which established an Office of Civil Rights and an Antisemitism Prevention Coordinator within the California Department of Education. Pennsylvania is the only other state considering similar measures, although no bill has been formally introduced. While we support the chance to become a model for other states when it comes to education and civil rights, we worry, as do civil rights experts, that a state-by-state approach to interpreting civil rights laws could lead to conflicting and politicized handling of cases depending on where students live and what laws are on the books. Students in one state might not have the same protections at school as students in another. If states take this approach, it is likely that we could end up with dozens of different, potentially conflicting opinions on what Title IX requires, for example. As a result, this approach could create more questions than answers. Such a system could mean that Title IX (and Title VI, and other key civil rights statutes) means one thing to students in Maryland and another thing to students in Kentucky and Pennsylvania.

Disruption of the IDEA Administrative Framework

House Bill 649 would materially alter the long-established special education dispute resolution framework by permitting direct civil actions in circumstances where federal and State law have required administrative exhaustion for decades. 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 appears to allow parties to sidestep administrative review if ever they are dissatisfied with a school-level outcome. As such, it would represent a significant structural shift, unlike anywhere in the country, and would increase litigation exposure and divert public education funds from classrooms to courtrooms.

Commitment to a Sunset

House Bill 649 contemplates a substantial expansion of authority at the Maryland Commission on Civil Rights, including increased staffing, new investigative responsibilities in public schools, and broader enforcement powers. We do not question the importance of strong civil rights enforcement. However, it is important to recognize that this restructuring is being driven by current federal conditions and would likely not have been contemplated absent those circumstances. That context should inform whether the State builds a permanent parallel framework.

If the General Assembly determines that expanded State-level authority is warranted, that authority should be expressly time-limited and subject to mandatory review. A clear sunset would ensure that Maryland does not permanently institutionalize a second enforcement regime in response to what may be a temporary federal posture.

Otherwise, the State risks creating duplicative and potentially competing federal and State oversight. 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. Even

when school systems prevail, defense costs can exceed the cost of settlement, creating pressure to resolve claims rather than fully litigate them. Those expenditures and disruptions inevitably divert resources from instruction and student services.

Additional Questions and Concerns with this Legislation

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, but also to perhaps serve as important considerations for the General Assembly when contemplating this bill:

Scope of Civil Remedies

- Does the civil action authorized under the bill permit monetary damages, injunctive relief, or both? Clarification is important because school systems’ litigation exposure differs depending on the remedy sought; while certain monetary claims may be subject to statutory protections or insurance coverage, defense costs associated with injunctive or declaratory actions are often not covered and school systems would be required to defend these lawsuits directly. This has even more significant implications if school systems are also required to pay attorney’s fees, witness fees, and court costs in a lawsuit that would be decided against them, taking public dollars directly from a school system, which may not be allowed under the Maryland Constitution.

Rationale

- What is the policy justification for conferring concurrent enforcement and investigative authority, including FERPA-related access, to MCCR?
- 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?

Parallel Complaint and Litigation Pathways

- The bill would allow an individual alleging discrimination to file a complaint either with the State Superintendent or with MCCR, and simultaneously bring a civil action in court. What is the State’s interest in permitting an individual to simultaneously pursue an administrative complaint (before MSDE or MCCR) and a civil action in court?
- Will the bill contemplate preventing duplicative proceedings, conflicting determinations, or forum shopping?
- How will investigative responsibility, evidentiary standards, and remedies be coordinated between MSDE and MCCR to avoid inconsistency?

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 to actual gaps.