

**Board of Education Legislative Exhibit**

March 3, 2021

**SECTION 1: BOE VOTE REQUESTED**

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**NO BILLS**

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**SECTION 2: BOE VOTE NOT RECOMMENDED AT THIS TIME**

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**NO BILLS**

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### SECTION 3: BOE VOTE NOT REQUIRED – ESTABLISHED POSITION IN 2021 LEGISLATIVE PROGRAM

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#### **HB0857 Environment - Synthetic Turf and Turf Infill - Chain of Custody and Reuse**

This bill requires a producer of synthetic turf and turf infill sold or distributed in the State, and an owner of previously installed synthetic turf and turf infill, to establish a system to track the chain of custody of affected products. The chain of custody information must be transmitted to the Maryland Department of the Environment (MDE). MDE must 1) publish the chain of custody information on its website and 2) develop and maintain a website that includes all chain of custody information it receives as well as other related information. The bill also prohibits the reuse of synthetic turf and turf infill except under specified circumstances.

*Sponsored by: Delegate Lehman*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb0857F.pdf>

#### **SUPPORT WITH AMENDMENTS**

AACPS appreciates the sponsor's efforts to address the concerns with the legislation as it was introduced last Legislative Session. While these efforts are certainly appreciated, AACPS has concerns with Section 9-2303 of this bill which restricts the reuse and disposal of synthetic turf and turf infill material unless a written waiver is obtained from MDE. This provision will create an unfunded mandate as it will increase costs of turf fields and future budgets during replacements of these fields. AACPS currently uses recycled infill on replacement fields.

The school system has a long-standing partnership and agreement with the Anne Arundel County Department of Recreation and Parks to collaboratively install, maintain, and schedule use of synthetic turf fields at AACPS high schools. As drafted, this legislation could seriously jeopardize this partnership and decrease access to and playtime on fields throughout Anne Arundel County. Accordingly, we respectfully request that the bill be amended to remove Section 9-2303 from the bill.

While it is difficult to quantify, we estimate that this legislation could cost AACPS \$3 million per year if existing synthetic fields would need to be converted back to irrigated grass fields.

#### **HB1062/SB0733 Education - Student Data Privacy - Reports and Student Data Privacy Council Sunset Extension**

This bill requires each county board of education to provide a list of digital tools to MSDE on or before July 1 each year. It also requires MSDE to publish information on digital tools provided by each county board on or before September 1 each year. The bill requires the Student Data Privacy Council to submit a report to the Governor and the General Assembly on or before December 1, 2024, and it extends the termination date for the Council to September 30, 2025.

*Sponsored by: Delegate D. Jones  
Senator Lee*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1062F.pdf>

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<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0733F.pdf>

### OPPOSE

AACPS does not believe that this legislation is necessary as student privacy is currently covered under the Family Educational Rights and Privacy Act (FERPA) and local school systems must comply with all the provisions outlined in the federal law. As such, there is no real purpose to the additions proposed in this bill which would simply create additional work and result in workload issues for a local school system. It is unclear how an online dashboard listing all digital tools that students and schools use helps with the implementation of FERPA or how this helps to further protect student privacy local school systems are already required to protect. The term “digital tools” is not defined. Another concern is that the legislation requires local school systems to report digital tools that are “not authorized” by the county board of education. First, it is important to note that whether or not to authorize specific digital tools is actually a decision that would be made by a local superintendent as part of the superintendent’s authority and responsibility in running the daily operations of a school system. Second, it is unclear how a local school system would report on digital tools that are “not authorized” if the school system is not aware of every potential digital tool available. The number of potential digital tools available to a local school system is extensive and there is just no reasonable expectation for a school system to be cognizant of every single potential digital tool and determine which digital tools are not authorized.

It is also important to note that digital tools are constantly evolving, and school systems use numerous digital tools in teaching and learning. In fact, AACPS has a comprehensive approval process regarding materials of instruction, which includes digital tools. This process includes specific criteria in our vendor agreements that address student data privacy. Again, this process exists now as a result of FERPA.

It is also important to note that this bill goes above and beyond recent recommendations by the Student Data Privacy Council. Also, the General Assembly passed legislation in recent years addressing the protection and disclosure of student data as well as legislation requiring MSDE develop best practices concerning data governance. As a result of these recent laws, school systems have developed policies and procedures to implement such best practices.

### **HB1089 Primary and Secondary Education – Expansion of Mental Health Services and Prohibition of School Resource Officers (Police-Free Schools Act)**

This bill repeals certain provisions of law relating to the establishment of the Baltimore City School Police Force. It prohibits a local school system from contracting with law enforcement agencies to station police officers or other law enforcement officers with arrest authority in schools or on school property. The bill prohibits a local school system from establishing its own police force. It alters certain functions and duties of the Maryland Center for School Safety to require the Center to analyze data on school security employees and adequate certain law enforcement coverage, and to submit a report regarding data on school security employees. The bill also alters the role of the School Safety Subcabinet to ensure that it promotes interagency efforts that support safe schools for all students, school staff, parents, and community members in a manner that minimizes school exclusion and justice system involvement for students. It adds several new members to the School Safety Subcabinet. The bill replaces references in law to “school resource officers” with “school security employees” for the purposes of training and data collected by the Maryland Center for

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School Safety. It requires the Center to identify when restraint or force should ever be used by a school security employee and when it is appropriate to call law enforcement to a school. The bill further provides an appropriation of \$10 million in fiscal year 2023 and each year thereafter to provide grants to local school systems to help expand the availability of school-based mental health staff and services, expanding restorative practices, developing community schools, and developing trauma-informed schools. The bill also requires local school systems to report on specified information related to the use of grant funds.

***Sponsored by:*** Delegate Acevero

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1089F.pdf>

### OPPOSE

AACPS recognizes the importance of promoting the positive mental health of all students through the development of impactful relationships and by teaching resilience. Student mental health is of particular importance during this time when AACPS students are faced with a global health pandemic and social unrest. School counselors, school psychologists, school social workers, pupil personnel workers, and school nurses collaborate with staff, parents/guardians, and the community to overcome barriers to learning. In 2019, AACPS, in collaboration with the Anne Arundel County Government, created The Anne Arundel Mental Health Task Force to examine, through a countywide lens, ways to address the increased mental health needs of children and adolescents in Anne Arundel County. The Task Force recently issued a report with recommendations which cover several key areas, including discrimination, bias, and cultural barriers; lack of access to resources and mental health providers; mental health stigma; poverty; social media; and trauma. AACPS is committed to continued collaboration with the County and stakeholders to continue to help address the mental health needs of our County's youth.

While this legislation would provide much needed funding to help ensure more mental health professionals in schools and AACPS supports this, AACPS has concerns with the provisions in this bill that would eliminate SROs from public schools. We are concerned about the unintended consequences that may result from the exclusion of SROs from school buildings. Such an exclusion would eliminate the relationship building among SROs, students, and school staff and could pose school safety concerns. As such, this exclusion would eliminate the many contributions SROs make to school safety.

AACPS recognizes the contributions SROs are making in schools across the State to benefit school climate, culture, and safety. We also recognize the need to pursue expanded training of SROs, principals, behavioral health staff, and teachers on the best classroom and school-based practices to maintain safe and supportive schools conducive to learning. Accordingly, AACPS has supported legislation over the last few years, including this year (HB522 Public Schools - School Resource Officers - Prohibited Conduct), to prohibit SROs from unilaterally enforcing discipline-related school policies, rules, regulations, or procedures to ensure that SROs do not make determinations regarding student discipline. HB522 is aligned with Maryland's training program for SROs and, therefore, the policies and procedures that should already be in place regarding the appropriate role of SROs as it relates to students, educators, and administrators, and student disciplinary actions.

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AACPS also supported the Maryland Safe to Learn Act of 2018 which required the development of a comprehensive curriculum for all SROs and any other designated school security personnel. The multi-faceted role of SRO's is evident in the outline of the 40-hour, 5-day, mandatory curriculum for all SROs and school security staff. We continue to support comprehensive training for SROs.

### **HB1096 Public Schools – School Psychologist Recruitment Program**

This bill establishes the School Psychologist Recruitment Program and requires the Program, in coordination with the State Board of Examiners of Psychologists, to provide professional development programs to certified school psychologists and individuals seeking to become certified school psychologists. It requires the Program to provide an amount equal to the certification fee charged by the National Association of School Psychologists to 1,000 individuals each year, subject to the funding provided in the State budget. The bill also requires MSDE to adopt regulations.

*Sponsored by: Delegate Reilly*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1096F.pdf>

### **SUPPORT**

AACPS supports this legislation because it promotes the recruitment of school psychologists and would provide funding for this effort. AACPS has experienced difficulty hiring school psychologists and this legislation would help school systems by creating a program to actively recruit and provide supports for school psychologists. Such a program would be helpful to school systems as they look to hire school psychologists as the program would help to create a larger pool of potential applicants.

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In 2019, AACPS, in collaboration with the Anne Arundel County Government, created The Anne Arundel Mental Health Task Force to examine, through a countywide lens, ways to address the increased mental health needs of children and adolescents in Anne Arundel County. The Task Force recently issued a report with recommendations which cover several key areas, including discrimination, bias, and cultural barriers; lack of access to resources and mental health providers; mental health stigma; poverty; social media; and trauma. AACPS is committed to continued collaboration with the County and stakeholders to continue to help address the mental health needs of our County's youth.

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## **HB1166 Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training**

This bill prohibits a public agency or nonpublic school from using a physical restraint on a student as a behavioral health intervention, except under certain circumstances. It prohibits a public agency or nonpublic school from using seclusion as a behavioral health intervention for a student, except under certain circumstances. The bill requires a risk assessment to be completed at certain points for a student who has an individualized education plan (IEP) and experiences a seclusion.

*Sponsored by: Delegate Ebersole*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1166F.pdf>

### **SUPPORT WITH AMENDMENTS**

AACPS supports the basic tenets of this legislation – the need to reduce restraint and seclusion, and the benefits of implementing trauma-informed decision-making, as appropriate. AACPS does not utilize seclusion within AACPS schools. However, nonpublic schools serving AACPS students use seclusion as necessary. Accordingly, the restriction on nonpublic schools will impact these schools. We have concerns with the proposed changes to seclusion practices, which are significant, as well as some of the IEP requirements set forth in the bill. One particular area of concern is the requirement to conduct a review of a student’s seclusion during a change of placement meeting or during an annual review as these meetings may not be timely. Another concern is the requirement that a health care practitioner – defined as a physician, psychologist, or social worker – be on site when a student has been secluded. It is not clear how a physician would be in a school setting on a regular basis to observe a student during a seclusion.

AACPS has concerns with and does not support the extensive reporting requirements outlined in the legislation, the additional training requirements, or the need for State intervention into local practices. While well intentioned, this bill includes a heavy documentation and accountability process regarding restraint and seclusion reporting, practices, professional development, data, and changes to practice that are burdensome and overreaching. While AACPS supports any practices that decrease the need for restraint and seclusion as well as trauma-informed interventions, this bill proposes analysis of data that is reported annually without defining what that analysis would look like, the purpose of the analysis, or who would conduct the analysis. The bill further requires changes based on the undefined analysis regardless of whether the undefined analysis is even needed. It also requires State intervention regarding the sufficiency of current training and requires that a local school system remedy any gaps identified by MSDE without providing the standards that would be required to make such a determination. Accordingly, we recommend that these provisions be stricken from the bill.

It is important to note that a 2017 task force studied this issue and released a report with recommendations on the use of restraint and seclusion. The task force, which consisted of experts on this subject matter from around the State, reached two overarching conclusions. First, it determined that the regulatory framework at the time should be maintained except in those areas where specific revisions have been recommended. Second, the task force determined that while some areas required regulatory enhancement, others could be addressed through additional guidance from MSDE. State regulations on restraint and seclusion were amended as a result. The

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requirements set forth in the amended State regulations limit the use of restraint and seclusion and more clearly defined the term “seclusion”, among other things. Under current regulations, physical restraint may only be used if 1) there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate; 2) the student’s behavioral intervention plan or IEP describes specific behaviors and circumstances in which physical restraint may be used; or 3) the parents of a nondisabled student have otherwise given written consent for the use of physical restraint while a behavior intervention plan is being developed. The regulations also specify when and how seclusion may be used. It is also important to note that physical restraint and seclusion may only be used by school personnel who are trained in their appropriate use.

Finally, this legislation also creates an unfunded mandate. AACPS will likely be required to hire additional staff to fulfill the various reporting and training requirements set forth in the bill.

### **HB1181/SB0921 County Boards of Education - Accessibility Standards - Digital Tools (Nonvisual Access Accountability Act for Grades K-12 Education)**

This bill requires digital tools developed or purchased by a county board of education to include specifications for access by students with disabilities, including nonvisual access. It requires a county board to provide a student with disabilities access to digital tools that enable students with disabilities to acquire the same information and access the same services as students without disabilities. The bill requires each invitation for bids or request for proposals for a digital tool to require submission of an accessibility conformance report.

*Sponsored by: Delegate Guyton  
Senator Lam*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1181F.pdf>

<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0921F.pdf>

### **OPPOSE**

AACPS believes that all students are entitled to challenging instruction from highly qualified professionals that addresses their unique learning needs and differences. AACPS also believes that all students should be afforded the opportunity to participate in challenging educational experiences that expand outcomes after graduation. Accordingly, AACPS clearly makes every effort to support the academic needs of each student. Students needs are addressed through various methods, including instructional materials, technology, and other necessary supports. In the case of a student receiving special education services, such accommodations are addressed in a student’s individualized education program (IEP), and the accommodations are uniquely tailored to the individual student. Determinations are made via comprehensive student assessments. However, this legislation is overly broad in mandating that all digital tools developed or purchased by a local school system meet the requirements established in the bill. This is quite different than the current more refined and unique approach which is tailored to a specific student’s instructional needs.

In accordance with State and federal laws and regulations, the needs of a student receiving special education services is multi-faceted one based on performance and other data maintained by the



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school system. Based on the relevant data and information, the IEP team, of which the parent/guardian is a member, determines how best to meet the student's educational needs. It is also important to note that AACPS has a comprehensive approval process regarding materials of instruction, which includes digital tools. The school system currently provides digital tools for students who receive special education instruction if it is determined that a student requires such an accommodation. Again, this determination is made via the IEP process.

In addition, this bill creates an unfunded mandate which AACPS opposes. To the extent that AACPS is required to spend additional resources to comply with the requirement set forth in the legislation, funding to implement this bill would detract resources that could otherwise be directed toward the strategic plan and educational equity. While difficult to quantify at this time, this legislation would have a significant fiscal impact on AACPS.

### **HB1185 Public and Nonpublic Schools - Interscholastic Athletics Eligibility - Reclassification of Student Athletes**

This bill requires MSDE to allow, and authorizes nonpublic schools to allow, student-athletes who are high school seniors to be reclassified as high school juniors to provide an opportunity for the student-athletes to participate in interscholastic athletics as juniors for the purpose of recruitment by the National Collegiate Athletic Association during the 2021-2022 school year.

*Sponsored by: Delegate Kipke*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1185F.pdf>

### **OPPOSE**

Will this legislation be well intentioned, AACPS has concerns that it will result in equity issues for AACPS students because it only focuses on athletics. There is no consideration given to students who are juniors and participate in clubs or other extracurricular activities. These students also participate in activities that may also have post-graduate implications as it relates to attending an institution of higher education. However, the bill is silent on these students and this, therefore, creates an equity issue. Other inequities would result in actual participation in high school athletics. More specifically, sports teams have roster limitations and allowing a senior to be treated as junior may impact the roster spots of other student-athletes and participation opportunities for those existing student-athletes. AACPS does not believe it is acceptable to allow any stipulation that creates an environment that directly or indirectly encourages or pressures schools to prioritize the participation of one group of student athletes over other groups of student athletes.

This legislation could also result in a participation log jam and have an unintended negative consequence on how many underclassmen will be kept on teams to accommodate for roster spots taken by the senior athletes. In addition, this legislation will likely reduce or eliminate the ability for Maryland schools to compete with schools from other states due to eligibility guidelines. Another unintended consequence from this bill could be impacts on the current Maryland eligibility years related to age of high school athletes and the State requirements related to four seasons of eligibility per sport.

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It is also important to note that, in accordance with State law and regulations, whether a high school student is promoted to the next grade or retained in the current grade is based upon the number of academic credits the student has received.

### **HB1322 Primary and Secondary Education - School Personnel - Prohibition on Retaliation for Not Returning to In-Person Instruction and Work**

This bill prohibits the Governor, the State Superintendent of Schools, the State Board of Education, a county superintendent, and a county board of education from disciplining, suspending, terminating, or otherwise retaliating against school personnel who choose not to return to a school building for in-person instruction during the 2020-2021 school year. It requires the State Board of Education and county boards to allow certain school personnel to instruct and work remotely to the extent practicable during the 2020-2021 school year.

*Sponsored by: Delegate Washington*

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1322F.pdf>

### **OPPOSE**

This legislation is unnecessary. AACPS, along with the other school systems in the State, currently have processes in place for employee work accommodations, approving leaves of absence, and telework opportunities for AACPS employees who qualify based on certain medical criteria or are providing care for a family member meeting certain medical criteria. The AACPS process is aligned with guidelines from the Centers for Disease Control and Prevention as well as State and County governments.

AACPS has concerns that this legislation does not consider or address an employee who refuse to become vaccinated or those employees whose work cannot actually be done remotely. AACPS opposes legislation that reduces or circumscribes local authority and this bill would essentially usurp the authority of a local superintendent to carry out the superintendent's duties as it relates to employee matters.

### **SB860 Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees**

This bill establishes that, under certain circumstances, public elementary and secondary school employees in the State are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19. It also provides that the presumption may be rebutted with certain evidence. The Act terminates after July 31, 2022.

*Sponsored by: Senator Zucker*

<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0860F.pdf>

### **OPPOSE**

While well intentioned, this legislation is problematic in a couple of ways. First, the bill does not specify how a public elementary and secondary school employee is to prove that the employee contracted COVID-19 while on the job. Unlike occupational hazards specifically associated with

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other jobs and identified in existing State law, COVID-19 is not unique to public school employees. In fact, as the growing number of cases in the United States indicate, COVID-19 can be contracted anywhere and at any point in time. Because the legislation presumes that a public school employee has an occupational disease, COVID-19, that is compensable under current law, the employee is not required to prove that the employee contracted COVID-19 while at work. The presumption is that the employee did, in fact, contract the virus at work. AACPS would then be forced to somehow prove, with substantial evidence, to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID-19 for reasons not arising out of and in the course of employment. This this would be difficult to prove at best.

AACPS takes the health and safety of students and employees seriously. The school system has a comprehensive process in place to assist employees who have contracted COVID-19 or have been in contact with someone with COVID-19. For example, if an employee must quarantine due to exposure to someone in the workplace with COVID-19, that employee is able to quarantine without the need to use leave. AACPS has a team of education professionals that assists families, employees, schools, satellite offices, and central office with the rapid and efficient collection of information regarding positive COVID-19 cases in school system buildings. AACPS will continue to work with employees as we all navigate through these unprecedented times.

Finally, this legislation creates an unfunded mandate on school systems. AACPS opposes unfunded mandates. It is difficult, at this time, to project what the fiscal impact would be on AACPS but we believe that the fiscal impact would be significant.