

BILL: House Bill 1456
TITLE: Public Schools - Access to Obscene Materials and Child Pornography - Prohibited
POSITION: OPPOSE
DATE: March 11, 2016
COMMITTEE: Ways and Means Committee
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The Maryland Association of Boards of Education (MABE), representing all of the state's twenty-four local boards of education, opposes House Bill 1456.

Local boards of education throughout the state appreciate the intent of this legislation to prevent access to obscene materials through the use of electronic devices lent to students that allow access to obscene or pornographic materials. However, MABE does not believe that this legislation is necessary to enhance school system efforts to bar student access to obscene materials following passage of very similar legislation enacted in 2000. Maryland law has long mandated that each school system adopt policies and procedures to prevent student access to obscene materials (Senate Bill 522, Chapter 9, 2000 Laws of Maryland). In this light, local boards have been complying for many years with state law that is clearly aligned with the intent of House Bill 1456.

In 2000, Congress enacted federal legislation, the Children's Internet Protection Act (CIPA), to comprehensively govern children's access to obscene or harmful content over the Internet. CIPA imposes many specific requirements on schools or libraries that receive discounts for Internet access or internal connections through the E-rate program – a program that makes certain communications services and products more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA and provided updates to those rules in 2011.

Schools and libraries have long been complying with requirements to have an Internet safety policy that includes technology protection measures. The protection measures must block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors). Before adopting this Internet safety policy, schools and libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal. Schools subject to CIPA have two additional certification requirements: 1) their Internet safety policies must include monitoring the online activities of minors; and 2) as required by the Protecting Children in the 21st Century Act, they must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response.

Schools and libraries subject to CIPA are required to adopt and implement an Internet safety policy addressing:

- Access by minors to inappropriate matter on the Internet;

- The safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications;
- Unauthorized access, including so-called “hacking,” and other unlawful activities by minors online;
- Unauthorized disclosure, use, and dissemination of personal information regarding minors; and
- Measures restricting minors' access to materials harmful to them.

Schools and libraries must certify they are in compliance with CIPA before they can receive E-rate funding.

For public school systems, the major difference between this bill and the state law enacted in 2000 is the penalty provision. This legislation would place school systems in the untenable position of being penalized, based on any student or other person accessing obscene materials via the internet, by the loss of enormous amounts of state education aid. Local boards are deeply troubled by the unwarranted scope of this potential penalty for violations by students and other persons of adopted school system policies and procedures.

School systems are also concerned about, and complying with federal laws regarding, the privacy of student online activity for purposes of data collection. MABE supported passage of the Student Data privacy Act of 2015 (House Bill 298) as needed to address a serious and recently emerging policy area involving student use of online information and educational tools, The U.S. Department of Education's Privacy Technical Assistance Center (PTAC) released updated guidance in 2014, and this legislation addressed gaps in Maryland's law to reflect the best practices identified by the department and practitioners in the field of school law.

Congress enacted the Children's Online Privacy Protection Act (COPPA) in 1998 to require the Federal Trade Commission (FTC) to issue and enforce regulations concerning children's online privacy. The FTC's original COPPA Rule took effect on April 21, 2000; and an amended Rule became effective on July 1, 2013. According to the FTC, “The primary goal of COPPA is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the Internet. The Rule applies to operators of commercial websites and online services (including mobile apps) directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13” (Complying with COPPA: Frequently Asked Questions, FTC, March 2015).

In these ways, MABE firmly believes that the use of information technology by students is thoroughly governed and protected by existing state and federal laws and policies.

For these reasons, MABE requests an unfavorable report on House Bill 1456.