

BILL: House Bill 1228
TITLE: Education – Grounds for Discipline
POSITION: OPPOSE
DATE: March 10, 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 1228.

MABE opposes this bill because it would remove the authority to discipline employees from the local board of education and transfer it to an arbitrator if requested by the employee. Such a transfer would adversely impact the ability of local boards to respond to employee misconduct consistent with the best interests of the students, the school system, and community. Instead, House Bill 1228 would transfer the board responsibility to an arbitrator, an independent third party who is not required to balance of the employee’s interests and the school systems on behalf of all students.

Local boards of education, which approve the hiring of all certificated employees, should retain the authority to terminate or suspend their employment for one of the five reasons stated in the law (immorality, misconduct, incompetency, willful neglect of duty, insubordination). Outside arbitrators, who by definition have no connection to the school system, should not be empowered to determine who should remain employed by the school system. Local boards represent the interests of the entire community – students, teachers, parents, businesses, government leaders – and must be able to decide when any specific individual’s actions should disqualify that person from teaching the students in that community, either temporarily or permanently.

The board of education is first and foremost a board, meaning it is made up of five or more individuals who can hear termination and suspension cases and who can debate and deliberate on those cases. House Bill 1228 would place these decisions in the hands of a single individual without any option to for the local board to consider and deliberate on the employee actions at issue.

Employee discipline cases may involve incompetency, and a determination of incompetency is based in part on the expertise of the school system administrators and in part on the local board of education which sets the standards for its educators. Such cases should not be entrusted to an individual, single arbitrator who may well have no knowledge or familiarity with the teaching and learning standards in a given school system.

Employee discipline cases may involve misconduct, and a determination of misconduct is based on whether the local board as the employer believes the act is sufficiently egregious as to affect the individual's ability to effectively teach in that local school system. That question cannot be answered without knowing the schools, the students, and the specific expectations of the community, and again is not based on a simply statewide list of behaviors that call for a specific punishment. The local board is clearly in a better position than an arbitrator who might not even have any connection to Maryland, much less the specific school system and locality.

Employee discipline cases may involve immorality, and a determination of moral behavior is based on community standards, i.e., what actions violate the standards of decency expected of our teachers by our students, parents, and other community members. The General Assembly included the term "immorality" and did not reduce that to a specific list of behaviors; this is because the law recognizes that local boards are to make these determinations, not outside decision-makers.

Currently, when a teacher dismissal case is heard before the local board of education, the decision may be appealed to MSDE which refers the case to the Office of Administrative hearings (OAH) for a hearing. The case can thereafter be appealed to the Circuit Court for judicial review. Under the proposed bill, if an appellant employee requests arbitration, the appeal would go directly to the Circuit Court. The State Board of Education and OAH process would be essentially abrogated. MABE firmly believes that this process would inappropriately strengthen the employee's interests and weaken the ability of a local school superintendent, local board, and state board of education to decide, review, and enforce employee discipline cases.

For these reasons, MABE urges an unfavorable report on House Bill 1228.