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April 9, 2019

Via email to collinsr@charlescountymd.gov

Reuben Collins, President
Board of Charles County Commissioners
200 Baltimore St.
La Plata, MD 20646

Re: Opposition to Proposed CCPS' Alternative Program – Fresh Start Academy

Dear President Collins:

Disability Rights Maryland (DRM) and our partners are writing to express our very serious concerns with the request to open an Alternative Program (“Fresh Start Academy”) contained within Charles County Public Schools’ (CCPS) proposed 2020 operating budget. DRM is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. For over 40 years, we have served Maryland students with disabilities in their educational matters through individual case representation and systemic policy work. Alongside our partners, we have played an active role in school discipline work. We were instrumental in the drafting and passage of the 2017 Suspension Ban for Prekindergarten through Second Grade Students (“PreK-2nd Suspension Ban”)¹ and held a subsequent seat on the Maryland State Department of Education’s PreK-2 Suspension/Expulsion Stakeholder group, which drafted the Department’s guidance document.² It is with this background and experience in mind that **we strongly recommend that you do not approve CCPS’ request for \$452,200 in operating expenses to open a new elementary alternative program.** It is our understanding that CCPS intends to implement this alternative program in a separate building, segregated from the regular elementary schools.

CCPS has acknowledged that they are struggling to provide appropriate services to students who engage in challenging behavior.³ While we encourage and support school districts considering how they can better support the needs of their students, we are concerned that CCPS has chosen to provide additional supports *in a separate, alternative setting*. This proposed program ignores the spirit and intent of the PreK-2nd Suspension Ban law. It also raises serious concerns about CCPS’ obligations under federal civil rights laws, such as Section 504 of the Rehabilitation Act of 1973 (“Section 504”), Title II of the Americans with Disabilities Act of 1990 (“ADA”) and the Individual with Disabilities Education Act (“IDEA”), to evaluate students with disabilities and provide services and accommodations in the most integrated setting.

¹ Md Code Educ. § 7-305.1(b)(1).

² See, *PROHIBITION OF SUSPENSION OR EXPULSION FOR STUDENTS IN GRADES PREK TO 2*, available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/TA/GuidanceProhibitionSuspensionExpulsionStudentsGradesPreK2.pdf>.

³ See FY 2020 Proposed Operating Budget February 12, 2019, p. 15, available at <https://www.ccboe.com/images/aboutus/budget/FY2020ProposedBudget.pdf>.

CCPS’ proposed alternative program violates Maryland law requiring the provision of services within a student’s regular school.

DRM and its partners worked with the Legislature to pass the PreK-2nd Grade Suspension Ban because we recognized the negative impact of exclusionary discipline on our students, especially our youngest learners. The intent of the law was to ensure that removal from a student’s regular education program was a last resort, limited to exceptional circumstances, and only after supports and interventions were provided. The Maryland Coalition to Reform School Discipline has submitted a letter to your office outlining the negative impact of removal on students and the requirements of state law.⁴ We join them in reiterating that Maryland law requires schools to provide services and supports within a student’s regular education program, and therefore the creation of a separate, alternative program violates the letter and spirit of the law.⁵

CCPS’ proposed alternative program raises concerns about the school system’s compliance with federal laws requiring the integration of students with disabilities in regular education programs.

In addition to the violation of state law, we also bring to your attention issues regarding federal law and CCPS’ obligations to students with disabilities. Federal laws protecting students with disabilities – Section 504, ADA and IDEA – require that students with disabilities be given access to their nondisabled peers and educated in the “most integrated setting”⁶ or “least restrictive environment”.⁷ Specifically, Section 504’s regulations require that school systems educate students with disabilities in the regular environment unless education and programming “in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily”⁸; and the ADA requires school systems to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”⁹ Similarly, IDEA states that local school systems may only remove students with disabilities from the regular education environment “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁰

The “most integrated setting” and “least restrictive environment” requirements are an acknowledgement of an important educational concept – “inclusion”. In special education and disability law, we are constantly striving to ensure students with disabilities are included as much as possible with their nondisabled peers, so as not to continue the historic pattern of segregation of these students. Research demonstrates that when students with and without disabilities are

⁴ Attached is the Coalition’s letter. DRM is a member and co-chair of the Maryland Coalition to Reform School Discipline.

⁵ See Md. Code Educ. § 7-305.1(c).

⁶ 34 CFR 104.4 (b)(2).

⁷ 34 CFR 300.114 (a).

⁸ 34 CFR 104.34(a).

⁹ 28 C.F.R. § 35.130(d).

¹⁰ 34 CFR 300.114(a)(2)(ii).

educated together, they learn more, suspension and drop-out rates are lowered, and students go on to have higher rates of employment.¹¹

CCPS' proposal for an alternative program sets up a separate program that serves to segregate students with behavioral needs without addressing how additional supplementary aides and services can be provided within a student's home school. In fact, the staffing CCPS requests for the alternative program – “a behavioral specialist, teachers, instructional assistants and support staff”¹² – are all staff members who can and are deployed throughout the state in regular education schools.

DRM and its partners are especially concerned about the possibility that the program will end up serving predominantly students with disabilities given CCPS's discipline data. A review of the last five years' worth of discipline data demonstrates that while special education students account for approximately 10-12% of total student enrollment, they comprise approximately 19-25% of the students receiving exclusionary discipline.¹³

Given the federal legal requirements to include students with disabilities in regular education programs, evidence of the benefits of educating students with disabilities with their non-disabled peers, and data demonstrating that students with disabilities are disproportionately removed and excluded from their regular school placements, CCPS must take extra care to ensure that any “therapeutic” services are first provided to students within their home schools.

CCPS' proposed alternative plan may circumvent the school system's compliance with “Child Find” obligations under the IDEA and Section 504.

Under the IDEA, school systems have an obligation to identify, locate and evaluate all students with disabilities residing within their districts who may require special education and services.¹⁴ Similarly, Section 504 requires school districts to evaluate students "who, because of handicap, need or are believed to need special education or related services."¹⁵ Placement at the alternative program may delay the identification of eligible special education students and deprive them of their rights under IDEA and Section 504. Furthermore, students should be identified and evaluated in their home schools in order to plan for services and accommodations that will assist them to remain in their home setting. It is not clear how CCPS intends to evaluate the needs of students placed at the alternative program to ensure the programming offered meets the goal of keeping students in the least restrictive environment. The IDEA sets out a clear process for the careful inquiry into the needs of the student, appropriate educational planning, along with progress reports and annual review of the student's educational program. It is not clear that students in the program will benefit from this systematic approach to disability-related needs.

¹¹ See What is Inclusive Education?, Maryland Coalition for Inclusive Education, available at <http://www.mcie.org/pages/about-inclusive-education/what-is-inclusive-education>.

¹² 2020 CCPS Proposed Operating Budget Summary, available at <https://www.ccboe.com/images/aboutus/budget/BudgetSheetSummary.pdf>.

¹³ See "Suspensions, Expulsions, and Health Related Exclusions" and "Maryland Special Education Census Data" reports, Maryland State Department of Education, available at <http://www.marylandpublicschools.org/about/pages/dcaa/ssp/index.aspx>.

¹⁴ 34 CFR 300.111 (a)(1)(i).

¹⁵ 34 CFR 104.35(a).

CCPS should focus funding requests to implement school-wide programming and interventions that benefit all PreK-2nd grade students, and not just those experiencing challenging behaviors.

In addition to the concerns raised in the this letter about the segregation of our youngest learners, by choosing an alternative program model, CCPS misses out on an incredible opportunity to provide services and supports to the entire school, thereby improving experiences for a wider group of students and staff. In reviewing discipline data for Charles County, only 30 students received out-of-school discipline in school year 2017-2018. Given these low numbers, it makes sense that CCPS focus on school-wide opportunities. In its PreK-2nd Grade Suspension bulletin, the Maryland State Department of Education provided examples of the type of programming that districts should consider in planning for these students, including but not limited to:

- Positive Behavioral Interventions and Supports (PBIS);
- Social Emotional Foundations of Early Learning (SEFEL);
- Second Step Early Learning through Grade 8;
- The Early Childhood Family Engagement Framework Toolkit;
- Trauma-Informed Approach and Trauma-Specific Interventions; and
- Restorative Practices (RP).¹⁶

School districts like CCPS need to focus on strategies to assist ALL students within their regular education program. This approach not only ensures compliance with state and federal laws, but it also allows all students to reap the benefits of being educated with students different from themselves with a wider range of services and supports to meet their individual needs and strengths.

For the foregoing reasons, we strongly recommend that the Board not approve CCPS' budget as drafted and that CCPS consider using requested funds in a way that keeps students in their regular education programs with school-wide available resources.

We thank you for your time and consideration. If you have any questions about these remarks, please contact Amanda White at AmandaW@DisabilityRightsMD.org or (443) 692-2508.

Sincerely,

Amanda R. White

Amanda R. White, Esq., M.P.H.
Disability Rights Maryland

¹⁶ See, *PROHIBITION OF SUSPENSION OR EXPULSION FOR STUDENTS IN GRADES PREK TO 2*, available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/TA/GuidanceProhibitionSuspensionExpulsionStudentsGradesPreK2.pdf>.

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