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COMMUNITY SHARES NORTHWEST OHIO

Testimony Before the Ohio House Primary and Secondary Education Committee
House Bill 206
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Good Afternoon Chairperson Bird, Vice Chair Fowler-Arthur, Ranking Member Robinson, and members of the Ohio House Primary and Secondary Education Committee. Thank you for the opportunity to testify about House Bill 206 and its proposed indefinite student expulsion. My name is David Manor. I am an attorney at Advocates for Basic Legal Equality, Inc. (ABLE). ABLE is a non-profit regional law firm that provides free legal assistance in civil matters to help individuals and groups living on low incomes in 32 counties in Western Ohio achieve self-reliance, equal justice, and economic opportunity.

Specifically, I work in our Meaningful and Appropriate Education practice group. We are attorneys and paralegals who believe just and equitable education can help children living on low incomes learn, graduate, and have a better life and job in the future. ABLE is here to testify on behalf of the families and students we serve, which include students with disabilities and their caregivers, as well as low-income families, who could be disproportionately affected by this law.

ABLE opposes House Bill 206. House Bill 206, in its current form and even with possible amendments referenced in past hearings, is fundamentally flawed and creates a variety of risks. Those risks include violations of student rights, such as: freedom of speech (First Amendment);[1] due process and equal protection (Fourteenth Amendment);[2] parent involvement in the child's education and health; freedom from disability discrimination in three laws: the Americans with Disabilities Act,[3] Individuals with Disabilities Education Act,[4] and Section 504 of the Rehabilitation Act;[5]; and freedom from other protected class discrimination.

I would like to start by expressing appreciation for the intent behind this bill. ABLE supports mental health support in schools. Many of our clients seek legal help specifically for ensuring that their children with social-emotional and/or developmental disorders receive mental health supports and counseling in

[1] U.S. Const. amend. I
[2] U.S. Const. amend. XIV
[3] Americans With Disabilities Act of 1990, 42 U.S.C. § 12101.
[4] Individuals with Disabilities Education Act, 20 U.S.C. § 1400
[5] Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794

school. ABLE also supports ensuring that students who may be at risk obtain assistance to help them, rather than just being expelled and forgotten. ABLE also generally supports the requirement for ongoing educational services during expulsions that this bill proposes—all expulsions, not just the ones in this bill.[6] While this bill comes from a place of desiring mental health supports and using those supports to assist school safety, we believe that House Bill 206 does NOT accomplish these goals, and instead creates a variety of legal cracks that can and will be used to harm the students who are most vulnerable and in need of the supports which this body wishes to provide.

Today I wish to discuss five major concerns with HB 206:

1. This bill uses vague and undefined terms, which open the door for school districts to expel many students for difficult-to-predict different reasons.
2. This bill puts too much power in the hands of a district about conditions for the child's return to school, allowing for abuse.
3. This bill takes the power of control over mental health treatment out of the hands of parents and puts it into the hands of the school.
4. It allows for perpetual expulsion and district-defined conditions with no real upper limit or restrictions.
5. It has potential discriminatory consequences, including disparate impact on students with disabilities, low-income students, and minority students.

First, House Bill 206 includes a variety of vague and undefined terms regarding who may be expelled for the long and possibly permanent period in the bill. This creates a situation where each school district would implement the provisions in the bill in whatever way they want. A student who creates a perceived physical, mental, social, or emotional threat could be expelled, and any conceivable condition, even those unrelated to the student's actions, could be imposed upon them.

The risk of broad and vague terms is that, while some districts may use this bill's power for long and infinitely extendable expulsions sparingly, others may use it frequently. One effect is that moving throughout Ohio would be very difficult for families with children, whose actions might be acceptable in one district, while perceived as endangering "health and safety" in another. While some districts may choose to protect student rights, others may choose to target students and infringe upon rights that should be protected.

Our experience is that the vague language in the bill will be used to expel many students. Data reported by school districts supports this concern. In current Ohio law, similar language to HB 206 can be used to justify suspension or expulsion of pre-k through 3rd grade students, under its "only as necessary to protect the immediate health and safety" exemption. O.R.C. 3313.668(B)(1)(b). That exemption was *intended* by this legislature to be rather narrow, but instead resulted in more than 8000 suspensions or expulsions of pre-k through 3rd grade students

[6] ABLE notes, however, that alternative programs have their own set of concerns and need additional guardrails. Over the years, ABLE has represented students who were assaulted, traumatized, and/or received only monitoring from non-teachers in alternative classrooms.

in only one year of school.[7] We note that none of those young children brought a weapon to school, since weapon incidents would have been suspended or expelled under a different exception [O.R.C. 3313.668(B)(1)(a)]. The current broad, unspecific language in this bill opens the door for thousands of children to be expelled for an entire year and then unlimited extensions of that expulsion.

Second, due to the vagueness of this bill, every school district would have a massive amount of power about when children can return. The district would have the ability to force a parent to put their child through any form of service that the district finds appropriate. The district could coerce any type of self-incrimination or waiver of in-school or out-of-school civil or Constitutional rights as a condition of return. The district could impose a costly, far away, or long-waitlisted therapy as a condition of return, with no obligation to help the child receive it. The district could permanently exclude a student by simply stating they did not believe the child is rehabilitated, because there are no legal requirements for what rehabilitated means. The district becomes effectively all-powerful during this process; parents/students would have a lengthy and difficult process to fight against the expulsion, because realistically that fight would have to involve challenging the constitutionality of House Bill 206 in general. Even if parents do successfully fight back, the child in question could have gone years without an in-person education, missing out on the very important social growth they would have had if they were in class.

Third, the power given to the school district rolls into the next problem with the current bill, which is how it takes power out of the hands of the parents. Currently, the school can, by not coming to agreement about an assessor, force the parents to find a mental health provider and pay half of those expenses as part of the expulsion. Many families cannot afford such costs. The parents are then required to turn over any mental health information, and the school can impose conditions based on that information. Any type of specific therapy or services can be required by the school, taking that decision completely out of the hands of parents. Some schools may use this power to advocate for necessary care for a troubled student, but some may instead choose to abuse this power and force the parent to accept care they disagree with. The forced care would also be at the expense of the family. This means a parent could be forced to pay for their child to go to ineffective or possibly damaging services so that the same child can attend school.

Fourth, the district also carries the power for perpetual expulsions and to constantly move the goal posts. Much of what is previously discussed pales in comparison to the district's ability to renew the expulsion for additional 90-day terms indefinitely. The bill contains no limits on the number of extensions, so it would allow a district to expel a student permanently, as long as the district sent notice of the expulsion continuing every ninety days. There is no specialized review or oversight, and the district, as the bill is currently written, is only required to say that they do not believe the child is rehabilitated. The district can set brand new conditions, even if the old

[7] https://education.ohio.gov/getattachment/Topics/Student-Supports/Creating-Caring-Communities/2018-19-Pk-3-suspension-and-expulsion-data.xlsx.aspx. Even narrowing to language mirroring O.R.C. 3313.668(B)(1)(a) [the behaviors described in 3313.66(B)(2)-(5), of which (2)-(4) are specific, but (5) remains broad and open to implementation differences as schools are not criminal law experts] is very broad: over 3000 prekindergarteners through third graders were suspended/expelled for those described behaviors, in only one year.

conditions were fully completed by the student. The district alone would have the power to stop a child from ever setting foot into that district's school buildings ever again. While the bill does mention the current protections being available, the current protections are not designed for this type of situation.

Fifth, this bill has a high chance of disproportionately impacting students with disabilities, students in poverty, males, and students of minority race – with devastatingly years-long loss of learning. The concerns previously listed also carry the possibility that some conditions may be impossible for a child to complete, such as conditions that require unaffordable services. This concern, along with the vagueness of what can result in expulsion, carries with it a risk of disparate impact, for children with disabilities, children without means, and minority children. These groups are traditionally at a high risk for disciplinary action in Ohio. The statistics about disparate impact of suspension and expulsion on children with disabilities, children with economic disadvantage, and children who are Black, Indigenous, or a person of color are well-established in over a decade of Ohio data and research.[8] This bill has no safeguards or accountability against such disparate use of its provisions, and thus will undoubtedly continue the pattern of disparate impact on students with disabilities, children from economic disadvantage, and students of color. It also carries a risk of direct discrimination against those with mental health disabilities, who would be required to complete services that healthy or physically disabled students would not be required to participate in, just to set foot back in school.

Obtaining mental health services based on school recommendations is currently possible, using the Individualized Education Program (IEP) mandated by the Individuals with Disabilities Education Act and/or Section 504 programs. These systems allow (require) a school to evaluate a student fully to determine mental or physical disability needs. These laws require schools to provide services, including counseling as needed. These existing laws require parental involvement, including during the decision-making process. The parents also have ways of refusing inappropriate services and challenging services insisted upon by the school. Expanding requirements for evaluations, including defining how quickly an expedited evaluation must occur, and further clarifying requirements for mental health services as part of the IEP system would help to accomplish the same things desired in this bill while working with a pre-existing system that is already designed protecting students and for parental involvement. This system also has the option of utilizing Functional Behavioral Assessments and Behavior Intervention Plans to further assist schools while ensuring parental involvement and equal access.

Thank you again for the opportunity to testify in opposition to HB 206.

Respectfully submitted,

David Manor

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[8] Children's Defense Fund. https://www.childrensdefense.org/wp-content/uploads/sites/6/2021/06/The-State-of-School-Discipline-in-Ohio-6.9.2021-Final.pdf