



## Fairfax County Special Education PTA

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Delegate Glenn Davis  
Education Committee  
Virginia House of Delegates  
Pocahontas Building  
900 E. Main St,  
Richmond, Virginia 23219

Via Email: [DelGDavis@house.virginia.gov](mailto:DelGDavis@house.virginia.gov)

### **Re: HB 1272's Negative Impact on Students with Disabilities**

Dear Delegate Davis and Members of the Education Committee:

We are writing on behalf of the Fairfax County Special Education Parent Teacher Association (SEPTA). Fairfax County SEPTA supports the educational experience of students with disabilities and their staff in Fairfax County Public Schools. There are approximately 27,000 students with disabilities in FCPS, representing approximately 15% of the student population.

SEPTA is concerned that HB 1272 and its companion bill SB 739 will prevent students with disabilities from accessing their education in public schools during the Covid-19 pandemic. The Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) require schools to provide reasonable modifications, such as universal masking, to enable disabled students to access a safe school environment during the pandemic<sup>1</sup>. **We ask you to introduce an amendment to HB 1272 to remedy these concerns, we ask you to oppose SB 739 as passed; and we request a meeting with you to discuss our concerns as soon as possible.**

According to Virginia PTA's survey of parents, 79% of surveyed families supported mask-wearing in schools as a mitigation measure to ensure in-person instruction is available<sup>2</sup>. While we also understand and acknowledge that there are students with disabilities for whom masking is not possible; school districts already have existing policies in place to allow for those

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<sup>1</sup> See *The Arc of Iowa v. Reynolds*, No. 21-3268 (8th Cir. Jan. 25, 2022) <https://ecf.ca8.uscourts.gov/opndir/22/01/213268P.pdf> (upholding preliminary injunction enjoining enforcement of Iowa's law prohibiting mask requirements in schools because mask requirements are reasonable accommodations required by federal disability law to protect rights of disabled children.)

<sup>2</sup> See "Virginia PTA Statement on Schools Following CDC Guidelines, dated January 18, 2022" <https://www.facebook.com/VirginiaPTA/photos/a.439889102726784/4748309458551372/>

exceptions where masks are required and we support the continued existence of those exceptions.

### **The Problems with HB 1272:**

Many students with disabilities are at higher risk for severe illness from Covid-19 due to their disabilities and underlying medical conditions. In-person instruction is the most integrated, beneficial, and appropriate setting for most students with disabilities. Studies have shown consistently, throughout the pandemic, that people with disabilities are at significantly higher risk for severe medical outcomes from Covid-19.<sup>3</sup> These students **need** schools to follow CDC mitigation strategies so they can safely access in-person school, alongside their non-disabled peers.

The return to in-person instruction during the 2021-22 school year has been very successful under the framework the General Assembly enacted last year with SB 1303 because SB 1303 requires schools to offer in-person instruction in a manner in which it adheres, to the maximum extent practicable, to any currently applicable mitigation strategies for early childhood care and education programs and elementary and secondary schools to reduce the transmission of COVID-19 that have been provided by the federal Centers for Disease Control and Prevention. *Under SB 1303, schools in Virginia have, for the most part, remained open with minimal levels of in-school transmission, even as the Omicron variant swept through our communities.* Students with and without disabilities have all been able to learn safely in schools that are following CDC guidance. This is a remarkable achievement, for which the General Assembly should be congratulated.

HB 1272, as written, would sabotage all of that success.

### **HB 1272 removes these five key parts of SB 1303:**

- The requirement that schools follow CDC guidance to the maximum extent practicable;
- The allowance for schools to temporarily shift to virtual instruction when Covid-19 transmission is at a high level;
- The option to offer a virtual learning program to students who elect it;
- The direction to School Boards to set their own parameters for the provision of in-person instruction;
- Allowing teachers to teach virtually during isolation, quarantine or as an Americans with Disabilities Act (ADA) accommodation, and have that count as in-person Instruction.

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<sup>3</sup> See CDC, Persons with Certain Medical Conditions <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (Dec. 14, 2021) (persons at any age who are suffering from a number of medical conditions are more likely to be hospitalized, need intensive care, require a ventilator to help them breathe, or die).

Without the requirement that schools follow CDC guidance and the allowance for schools to temporarily shift to virtual instruction when transmission in a school is high, students with disabilities will need to risk their health, or even their lives, by attending school. Additionally, FCPS has over 400 students registered in their virtual program for the 2021-2022 school year, all of whom were approved through an application process in which they provided medical documentation to support their unique need for virtual instruction during the pandemic. HB 1272 would remove this option entirely, leaving these students shut out of school altogether, potentially denying their access to a free and appropriate public education as required by IDEA.

We are also concerned that removing mask mandates will increase transmission in schools, as has been seen elsewhere in the country<sup>4</sup>. This impacts students' access to their free and appropriate education, as increases in transmission will increase likelihood of quarantines for students with disabilities, which then removes their access to in-person instruction. At a time when schools are experiencing increased absences because of the surge, FCPS has indicated that there may be times when classrooms are combined and students participate in asynchronous instruction while in the school building to address teacher and substitute shortages. This alone significantly impacts students with disabilities, as asynchronous instruction often does not provide the accommodations necessary to access instruction. We are concerned that teachers not being allowed to temporarily teach virtually during isolation or quarantine or as an ADA accommodation would exacerbate this further, causing more educational disruption to students.

**We cannot support this bill in its current form. Students with disabilities are legally entitled to equal access to a safe learning environment. No parent should have to choose between their child's health or their education.**

#### **How to Fix HB 1272:**

Fortunately, this bill is easy to fix. Please amend HB1272 by inserting this language which comes directly from SB1303, a law that passed with overwhelming bipartisan support just last year:

*For the purposes of this act, each school board shall (i) adopt, implement, and, when appropriate, update specific parameters for the provision of in-person instruction and (ii) provide such in-person instruction in a manner in which it adheres, to the maximum extent practicable, to any currently applicable mitigation strategies for early childhood care and education programs and elementary and secondary schools to reduce the transmission of COVID-19 that have been provided by the federal Centers for Disease Control and Prevention.*

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<sup>4</sup> See CDC, Studies Show More COVID-19 Cases in Areas Without School Masking Policies <https://www.cdc.gov/media/releases/2021/p0924-school-masking.html> (school districts without a universal masking policy in place were more likely to have COVID-19 outbreaks).

*§ 3. Notwithstanding the provisions of § 2 of this act:*

*1. If a local school board determines, in collaboration with the local health department and in strict adherence to "Step 2: Determine the Level of School Impact" in the Department of Health's Interim Guidance to K-12 School Reopening or any similar provision in any successor guidance document published by the Department of Health, that the transmission of COVID-19 within a school building is at a high level, the local school board may provide fully remote virtual instruction or a combination of in-person instruction and remote virtual instruction to the at-risk groups of students indicated as the result of such collaboration or, if needed, the whole student population in the school building, but in each instance only for as long as it is necessary to address and ameliorate the level of transmission of COVID-19 in the school building.*

*2. Any local school board may, for any period during which the Governor's declaration of a state of emergency due to the COVID-19 pandemic is in effect, provide fully remote virtual instruction to any enrolled student upon the request of such student's parent, guardian, or legal custodian.*

*3. Any local school board may permit any teacher who is required to isolate as the result of a COVID-19 infection and any teacher who is required to quarantine as the result of exposure to another individual with a COVID-19 infection to teach from a remote location and in a fully virtual manner for the duration of such period of isolation or quarantine, consistent with the mitigation strategies as set forth in § 2 of this act.*

*4. Any teacher or other school staff member who is permitted to perform any job function from a remote location or in a fully virtual manner as a reasonable accommodation pursuant to Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.) shall be permitted to continue to perform any such job function in such a manner.*

*§ 4. The Department of Education shall establish benchmarks for successful virtual learning and guidelines for providing interventions to students who fail to meet such benchmarks and for transitioning such students back to in-person instruction.*

*§ 5. All teachers and school staff shall be offered access to receive an approved COVID-19 vaccination through their relevant local health district.*

*2. That in order to facilitate the implementation of § 3 of the first enactment of this act, the Department of Health shall maintain a guidance document for K-12 school reopening that contains metrics for determining whether transmission of COVID-19 within public school buildings is at a low, medium, or high level.*

This is the exact same language that the General Assembly passed last year by an overwhelming bipartisan majority, so it should not be controversial or partisan. And we know it works.

**SB 739 Runs Afoul of Federal Disability Laws and is Even Worse than HB 1272:**

Senator Chap Petersen introduced a floor amendment to SB 739 (the companion Senate bill) to require School Boards to allow parents to opt their children out of school divisions' universal mask requirements at will, despite the fact that the CDC currently recommends universal masking in schools without opt-outs:

Unfortunately, the Senate passed SB 739 with this amended language today. **We strongly oppose this amendment. We ask you to oppose any bills with any such language.** Senator Petersen's amendment will prevent school districts from enacting measures to protect the health and safety of their students, including students with disabilities who require the protection of universal masking as the CDC recommends, and for whom one-way masking is not protective enough.<sup>5</sup> This language makes the bill even worse for students with disabilities. It would shut these students out of school. Senator Petersen's amendment attempts to impermissibly prevent school districts from complying with their obligations to students with disabilities under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as previously referenced.

We look forward to working with you to achieve an improved version of HB 1272 that accounts for the needs of all students, including Virginia's students with disabilities who are more vulnerable to severe illness from Covid-19. Please let us know when you are available to meet with us.

Thank you for the opportunity to provide input and for the work you do on behalf of children in Fairfax County and throughout the Commonwealth of Virginia.

Sincerely,

Michelle Cades, President  
Amanda Campbell, Vice President  
Diane Cooper-Gould, Advocacy Chair  
Fairfax County SEPTA Board & Delegates

cc:

Virginia PTA [president@vapta.org](mailto:president@vapta.org)

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<sup>5</sup> See CDC, Improve How Your Mask Protects You <https://www.cdc.gov/coronavirus/2019-ncov/your-health/effective-masks.html> (Apr. 6, 2021) ("Masks work best when everyone wears them.")

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