

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 699  
 Ways and Means

(Delegates Washington and Ivey)

Education, Health, and Environmental Affairs

Office of the Attorney General - Special Education Ombudsman

This bill establishes the Special Education Ombudsman in the Office of the Attorney General (OAG) to serve as a resource to provide information and support to parents, students, and educators regarding special education rights and services. The ombudsman must arrange for a toll-free telephone number, available in English as well as other appropriate languages, to assist an individual seeking information or advice about special education. Information about the ombudsman and toll-free number must be provided as specified. By July 1, 2022, and each July 1 thereafter, the ombudsman must, consistent with federal and State privacy laws submit a report that includes specified information. **The bill takes effect July 1, 2020.**

Fiscal Summary

**State Effect:** Under one set of assumptions, general fund expenditures increase by an estimated \$261,000 in FY 2021 to hire required staff and operate the toll-free telephone number as described below. Out-years reflect full salaries with annual increases and employee turnover, annualization of toll-free telephone number and instant translation services, and ongoing operating expenses. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	261,000	314,900	322,200	332,700	343,500
Net Effect	(\$261,000)	(\$314,900)	(\$322,200)	(\$332,700)	(\$343,500)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None. As under current law, local school systems must comply with federal law regarding services for students with disabilities. Local school systems can provide information about the ombudsman and the toll-free telephone number as specified using existing resources.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The Attorney General must appoint the ombudsman. Salaries of the ombudsman and staff under the ombudsman and expenses related to the operation of the toll-free telephone number established by the bill, rent, equipment, supplies, and general operations must be as provided in the State budget. In cooperation with the Secretary of Budget and Management, the Attorney General must set minimum salary, qualifications, and experience standards for the ombudsman and any staff under the ombudsman.

The ombudsman must:

- serve as a source of knowledge and information on the State and federal laws, rules, and regulations governing the education of students with disabilities for parents, students, and educators;
- provide impartial information to parents, public schools, and educators on the procedures for resolving disagreements and disputes regarding the provision of special education or disciplinary action taken against students with disabilities;
- explain to parents of children with disabilities the rights of parents and students and how the parents may avail themselves of those rights;
- work neutrally and objectively with all persons to ensure that the special education system functions as intended;
- identify any patterns of complaints made by parents of students with disabilities and inform the Maryland State Department of Education (MSDE) about any such patterns; and
- serve as a general resource for disability-related information and make referrals to available State and federal services and programs for individuals with disabilities.

In performing the duties assigned under the bill, the ombudsman must treat all communications as confidential and may reveal the details of any communications only if necessary to achieve the ombudsman's' duties and done in accordance with applicable State and federal law.

School personnel must provide written information on the ombudsman and toll-free telephone number to parents at an initial evaluation meeting. This information must be provided in the parent's native language. Failure to provide this information does not constitute grounds for a due process complaint.

**Current Law:** The federal Individuals with Disabilities Education Act (IDEA) requires that a student with disabilities be provided a free appropriate public education in the least restrictive environment, in accordance with an Individualized Education Program (IEP) specific to the individual needs of the student. Chapter 233 of 2006 established a

Maryland process for resolution sessions that can be used to settle disputes about the identification, evaluation, and educational placements of children with disabilities, consistent with IDEA provisions for dispute resolution. Before conducting a due process hearing, the parent must have an opportunity to resolve a due process complaint at a resolution session. Chapter 271 of 2016 requires the MSDE to make staff available to assist a parent in understanding the *mediation* process.

Specifically, Chapter 271 requires the IEP team to provide a parent who disagrees with a child's IEP or special education services with, in plain language (1) an oral and written explanation of the parent's right to mediation; (2) contact information for receiving information on the mediation process; and (3) information regarding pro bono representation and other free or low-cost legal and related services available in the area. A parent may request this information at any IEP team meeting. A parent may request that the information be translated into the parent's native language, if that language is spoken by more than 1% of students in the local school system. The IEP team must provide the parent with the translated document within 30 days after the date of the request. MSDE must make staff available to assist a parent in understanding the mediation process.

Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

When a team of qualified professionals and the parents meet for the purpose of discussing the identification, evaluation, educational program, or the provision of a free appropriate public education of a child with a disability the parents of the child must be afforded the opportunity to participate and must be provided reasonable notice, as specified, in advance of the meeting.

At the initial evaluation meeting, the parents of the child must be provided (1) in plain language, an oral and written explanation of the parents' rights and responsibilities in the IEP process and a program procedural safeguards notice; and (2) written information that the parents may use to contract early intervention and special education family support services staff members within the local school system and a brief description of the services provided by the staff members. If a parent's native language is not English, the information must be provided in the parent's native language. Parents may request the information at any subsequent meeting.

If a child who has an IEP developed in another school system moves into a different local school system, that local school system must provide the specified information the time of the first written communication with the parents regarding the child's IEP or special education services. A local school system must publish information that a parent may use

to contact early intervention and special education family support services staff members within the local school system and a brief description of the services provided by the staff members in a prominent place on the section of its website relating to special education services.

Failure to provide the information required does not constitute grounds for a due process complaint.

**Background:** New Jersey established a very similar special education ombudsman in statute in January 2016. New Jersey has not published data on call volume for their toll-free number.

#### *Division of Early Intervention and Special Education Services*

MSDE's Division of Early Intervention and Special Education Services (DEI/SES) reports that it currently has a fully staffed [Special Education Family Support and Dispute Resolution Section](#) that, as set forth in Chapter 271, provides similar resources and supports as required by the bill. In the past year, this team (two full-time and two part-time professionals with extensive educational experience) responded to over 1,000 constituent contacts, including providing assistance with informal dispute resolution, resource referrals, and other information as requested.

Additionally, the DEI/SES Family Support Section conducts outreach across the State and maintains a close working relationship with the Special Education Family Support Teams in each local school system. This includes providing ongoing regional and statewide local school system training and technical assistance on a case-by-case basis when issues arise. DEI/SES Family Support also collects and maintains MSDE Family Support data and data provided by the Family Support Teams in each local school system.

The overarching goal of these Family Support efforts are two-fold: to assist with creating and maintaining positive relationships between families of students with disabilities and their local school system and to provide access to informal dispute resolution mechanisms.

#### *Toll-free Numbers*

According to the Federal Communications Commission, toll-free numbers are numbers that begin with one of the following three-digit codes: 800, 888, 877, 866, 855, or 844. Toll-free numbers allow callers to reach businesses and/or individuals without being charged for the call. The charge for using a toll-free number is paid by the called party (the toll-free subscriber) instead of the calling party.

**State Expenditures:** *Under one set of assumptions*, general fund expenditures increase by \$260,992 in fiscal 2021, which accounts for a 90-day start-up delay following the bill’s July 1, 2020 effective day. This estimate reflects the cost of hiring one full-time ombudsman, one full-time management associate, and one half-time assistant Attorney General to operate the special education ombudsman office in OAG. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including operating a toll-free telephone number available in English as well as other appropriate languages. The information and assumptions used in calculating the estimate are stated below.

- In Maryland there are 105,541 students with an IEP, and 10% of students are classified as English learners.
- Based on an assumption that 5% of families of students with an IEP each make one 10-minute call per year, it is assumed that the toll-free telephone costs approximately \$2,171 per year (\$1,628 when prorated the first year).
- Since 10% of students are English learners, it is assumed that 528 calls per year require translation services. Instant over-the-phone translation services are available from a number of vendors. One vendor published a rate of \$2.20 per minute for multiple languages. Therefore, instant translation services are estimated at \$11,616 per year (\$8,712 when prorated for the first year).

Positions	2.5
Salaries and Fringe Benefits	\$229,791
Toll-free Telephone Number	1,628
Instant Translation Services	8,712
Other Operating Expenses	<u>20,861</u>
<b>Total FY 2021 State Expenditures</b>	<b>\$260,992</b>

Future year expenditures reflect full salaries with annual increases and employee turnover, annualization of toll-free telephone number and instant translation services, and ongoing operating expenses.

The estimate above reflects that an average of 20, 10-minute calls per day are received by the office. To the extent that more or fewer calls are received by the office or the average call is longer or shorter than 10 minutes, expenses will increase or decrease accordingly.

This estimate reflects no decrease in staff for MSDE’s Special Education Family Support and Dispute Resolution Section. It assumes that its current duties, including training local school system staff, keep its current staff fully subscribed.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 504 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Office of the Attorney General; Maryland State Department of Education; Maryland School for the Deaf; Department of Budget and Management; Office of Administrative Hearings; New Jersey School Boards Association; Department of Legislative Services

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