

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 266 (Senators Patterson and Benson)
 Education, Health, and Environmental Affairs

Education - Voluntary Ethical Special Education Advocate Certificate Program

This bill requires the Maryland State Department of Education (MSDE) to establish and administer a Voluntary Ethical Special Education Advocate Certificate Program by July 1, 2022. Applicants must apply to MSDE on a form that it requires and must pay an application fee as set by MSDE. The bill specifies qualifications that applicants must meet for certification and a process and requirements for renewal of certification. An individual who receives certification is authorized to represent to the public that the individual is a certified ethical special education advocate, while the certificate is effective. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$97,100 in FY 2022, which includes one-time program development costs. Beginning in FY 2023, general fund revenues increase due to certification fees, which are assumed to cover ongoing program costs annually. Any judicial review pursuant to applicant petitions can be handled with existing court system resources.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	\$0	\$60,900	\$62,500	\$64,600	\$66,800
GF Expenditure	\$97,100	\$60,900	\$62,500	\$64,600	\$66,800
Net Effect	(\$97,100)	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: To qualify for a certificate as an ethical special education advocate, an applicant must be of good moral character and at least 21 years old. The applicant must also have completed an online training module or webinar approved by MSDE and pass a related online examination approved by the State Board of Education.

MSDE must issue a certificate to any applicant who meets the requirements of the bill and must renew the certificate of each special education advocate who meets requirements of the bill. An applicant may petition a decision for judicial review. MSDE must adopt regulations to implement the bill. The bill is not intended to prevent parents from choosing a noncertified advocate to act on their behalf.

Current Law:

Individualized Education Programs

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an individualized family service plan (IFSP) or individualized education program (IEP) specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities age 3 through 21. 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.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

An IFSP is similar to an IEP and requires a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified for each child and family. The parent of a child with a disability is a member of the IFSP team that is responsible for developing and reviewing a child's IFSP and for revisions to the IFSP.

At the initial evaluation meeting, the parents of a child with a disability must be provided, in plain language, a verbal and written explanation of the parents' rights and responsibilities in the process and a program procedural safeguards notice. The parents may request this information at any subsequent meeting and may request the information in their native language if it is spoken by more than 1% of the students in the school system.

Dispute Resolution

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.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child's special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. (Public agencies include MSDE, local school systems, the Maryland School for the Blind, the Maryland School for the Deaf, and any other State agency responsible for providing education to students with disabilities.) A parent of a child with disabilities may file a due process complaint with the Office of Administrative Hearings (OAH) and the public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

State Fiscal Effect: It is assumed that MSDE will set a fee that is sufficient to cover its administrative costs (described below) under the bill. However, MSDE will incur expenses to establish the voluntary certification program in the first year, which will not be offset by fee revenues. Therefore, general fund expenditures increase in fiscal 2022 to start up the program, with revenues increasing beginning in fiscal 2023 to cover the annual costs thereafter.

The Department of Legislative Services (DLS) estimates that one half-time position will be sufficient for MSDE to administer the certificate program. General fund expenditures increase by \$48,800 in fiscal 2022. This estimate accounts for a 90-day start-up delay after the bill's July 1, 2021 effective date and includes a salary, fringe benefits, and ongoing operating expenses. MSDE will also incur one-time costs of \$48,300 to develop the online training module, including the tracking of examination results. Out-year expenditures, amounting to \$66,800 by fiscal 2026, reflect annualization, \$5,000 annually to maintain the online training module, and the elimination of one-time costs.

Regular Position	0.5
Salary and Fringe Benefits	\$43,501
Online Module Development	48,278
Other Operating Expenses	<u>5,336</u>
Total FY 2022 State Expenditures	\$97,115

MSDE advises that it is difficult to anticipate the number of potential applicants and, therefore, a fee schedule for the program. DLS assumes that there will be a significant number of applicants and that MSDE will charge fees at a rate that is sufficient to cover ongoing costs. However, if this is not the case, net State expenditures will outpace revenues.

Additional Information

Prior Introductions: SB 853 of 2020 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1595, was assigned to the House Rules and Executive Nominations, but no further action was taken. SB 1016 of 2019 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 1103 of 2018 was withdrawn following a hearing in the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 966 received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: HB 273 (Delegate Turner) - Ways and Means.

Information Source(s): Baltimore City Public Schools; Prince George’s County Public Schools; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2021
rh/rhh

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510