

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 497

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary and Ways and Means

Juvenile Services Education Board and Program – Establishment, Powers, and Duties

This bill repeals statutory provisions regarding the Juvenile Services Education (JSE) Program within the Maryland State Department of Education (MSDE) and instead establishes a JSE Board as an independent unit within the Department of Juvenile Services (DJS). The bill requires the board and an appointed superintendent to oversee and provide for educational services to all juveniles who are in a residential facility (specified facilities operated by DJS), as specified. Beginning July 1, 2022, (1) the board must oversee and approve all educational services to all juveniles who are in a residential facility and (2) DJS and the board, as specified, must jointly have the authority and responsibility for implementing JSE programs in the State. Beginning in fiscal 2023, the Governor must include sufficient funds in the State budget for DJS and the board to implement the bill's requirements. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: State revenues and expenditures for DJS increase beginning in FY 2023 to reflect the required transfer of JSE responsibility to DJS; State revenues and expenditures for MSDE correspondingly decrease. General fund expenditures further increase related to staffing needs as early as FY 2022 and for other accountability measures. Special fund revenues and expenditures from local reimbursements increase annually beginning in FY 2022, as discussed below.

Local Effect: Potential increase in revenues and expenditures if a local board of education or community college contracts with DJS to provide educational services to juveniles. Local government reimbursement expenditures increase minimally, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Juvenile Services Education Board

The board, housed within DJS as an independent unit, consists of 11 members; 5 members are appointed by the Governor with the advice and consent of the Senate and must have a high level of knowledge and expertise in at least one of several specified areas, including teaching, social work, or working with institutionalized youth. One member must be an educator employed by the State who is engaged in the education of juveniles residing in a residential facility and is elected by the educators employed by DJS, as specified. Appointed board members (and the elected educator member) serve four-year terms. The board must elect a chair and a vice chair. Each member of the board is entitled to reimbursement for expenses under the standard State travel regulations. The board must meet publicly at least once per month, as specified. DJS serves as staff to the board and must adopt regulations to conduct the election of the educator member. To the extent practicable, the appointed members of the board must reflect the diversity of the population of juveniles in the State.

The board must develop, recommend, and approve an educational program for each residential facility. Each educational program must meet the specified needs and circumstances of the juveniles in the residential facility and be accredited by an approved accrediting agency. The board must also (1) in consultation with the Juvenile Justice Monitoring Unit (JJMU) and DJS, develop minimum standards and a reporting structure to measure educational outcomes and assess implementation of the JSE program; (2) review a quality assurance report developed by DJS each quarter; and (3) conduct a performance review of the JSE Superintendent at least once every four years. Additionally, the board must approve postsecondary education programs, including vocational and online programs that meet the needs of the juveniles in a residential facility. DJS may adopt related regulations.

The board must be included as a unit within DJS for purposes of the annual operating budget. The programs overseen by the board must be included in the board's budget. Specified support services for the board must be provided by existing units in DJS and the cost of any necessary support provided to the board must be included in the budgets of those units, including (1) information and technology services; (2) procurement services; (3) human resources; and (4) facility and office maintenance. However, the superintendent must have exclusive control of the day-to-day operation of JSE. Decisions on the provision of education, including those relating to staff, must be made exclusively by the board or the superintendent, subject to appropriations in the State budget, as specified. The board

and DJS must, jointly negotiate a memorandum of understanding (MOU) carefully delineating the duties of each in the provision of juvenile education services.

Juvenile Services Education System Superintendent

The board must appoint a system superintendent who has specified responsibilities, including (1) implementing and administering the educational programs approved by the board; (2) overseeing the education of every juvenile in a residential facility; (3) meeting with and advising the board about educational programs and outcomes for juveniles; (4) selecting, organizing, and directing the staff of the JSE program; (5) ensuring that the policies and decisions of the board are carried out; (6) coordinating with DJS to ensure that the operation of juvenile education services are integrated with the noneducational operations of DJS; and (7) performing any other duties assigned by the board. The superintendent is entitled to the salary provided in the State budget and serves at the pleasure of the board. The superintendent may hire additional staff as provided in the State budget. The superintendent must meet specified criteria, including having at least seven years of experience in teaching and administration.

Funding for Juvenile Services Education

For fiscal 2023 and each fiscal year thereafter, the Governor must include in the annual budget bill an appropriation in an amount sufficient to meet the requirements of the JSE program.

A local board of education must reimburse DJS for the basic daily cost for each juvenile who was domiciled in the county before placement in a residential facility if the juvenile is in a facility or residential facility, in the custody of DJS for 15 consecutive days or more, does not meet the criteria for shared State and local payment of educational costs, as specified, and was included in the full-time equivalent enrollment of the county, as specified. “Basic daily cost” means the average amount spent by a local board from local and State funds for the public education of a nondisabled child, divided by the number of actual school days required for a public school under § 77-103 of the Education Article.

Juvenile Services Education Requirements

The superintendent must provide and oversee educational services to all juveniles in a residential facility and implement for each residential facility an educational program as approved by the board that meets specified requirements. DJS, subject to the MOU referenced above, must employ any staff necessary to carry out the JSE program as provided in the State budget. Educational staff in DJS must be subject to the career ladder and salary provisions under title 6, Subtitle 10 of the Education Article. DJS must adopt regulations to carry out the bill’s provisions.

The board may authorize DJS to contract with a nonprofit private party or a county board of education to provide educational services for the juveniles in a residential facility.

DJS must notify a juvenile in custody of the juvenile's education rights. A juvenile in the custody of DJS who is enrolled in a school at the time the juvenile is taken into custody may not be disenrolled from that school until after disposition of the juvenile's case. The public school in which a juvenile is enrolled must provide the juvenile with the educational materials necessary to remain current with the juvenile's educational program at the school. In consultation with the board and the local boards, the superintendent, with the aid of DJS, must develop and implement a procedure to transfer a copy of a juvenile's education records from the school in which the juvenile is enrolled to the facility in which the juvenile is placed. The records must include copies of specified materials, including an Individualized Education Program (IEP).

The superintendent (with the aid of DJS), in consultation with the local boards, must develop and implement a procedure for the re-enrollment of a school-aged juvenile in a public or private school before the juvenile is released from the custody of DJS. The superintendent must develop an educational plan for each school-age juvenile in the custody of DJS for more than four weeks that (1) is designed to meet the juvenile's needs and (2) ensures that, to the intent practicable, the juvenile is able to seamlessly reintegrate into the juvenile's home school. The superintendent must offer a minimum of 2.5 hours of a postsecondary education per weekday to juveniles in its custody who have graduated from high school or obtained a high school diploma by examination. The board may authorize DJS to contract with a community college or other institution of postsecondary education in the State to provide such programs. Each local board may waive all high school graduation requirements, including required coursework, for a juvenile who is committed to the custody of DJS and is subsequently transferred to the local school system while in grades 11 or 12.

Reporting Requirements and Accountability

By December 1, 2021, MSDE and DJS must submit to the General Assembly a report detailing plans for the transition of JSE programs pursuant to the bill.

By December 1, 2022, and annually thereafter, the superintendent with the aid of DJS must submit a report to the Governor and the General Assembly on the aggregate educational outcomes of the educational program for each residential facility. The report must include student outcomes; external organizational partnerships; and transitions between enrollment in public school and the custody of DJS. The information must be reported in the aggregate and disaggregated by specified factors, including race, gender, and familial income.

By June 15, 2023, the JSE program superintendent must submit an implementation plan to the Accountability and Implementation Board (as created by Chapter 36 of 2021 to monitor and evaluate implementation of the Blueprint for Maryland's Future) for approval.

MSDE must also send an Expert Review Team to every residential facility in which juveniles are educated by the end of the 2025-2026 school year.

The board is subject to investigation by the Maryland Office of the Inspector General for Education and oversight and monitoring by MSDE and the State Board of Education. By July 1, 2027, and July 1, 2030, the designated office within the Department of Legislative Services (DLS) must conduct an evaluation of the program.

By January 1, 2024, DJS must contract with a public or private entity to conduct an empirical evaluation of policies and practices regarding the educational services provided to juveniles in residential facilities. In conducting the study, the entity with which DJS contracts must review the effectiveness of current policies and practices, including (1) student educational and disciplinary outcomes; (2) if specified educational plans are meeting juvenile needs; (3) the quality of the curriculum; (4) and how conducive the educational setting is to learning. The entity must, after completing its review, develop recommendations to improve the delivery of juvenile educational services. By October 1, 2026, the entity must report its findings and recommendations to DJS, the Governor, and the General Assembly.

In consultation with local school systems, the board must examine and report on how, before the disposition of a student's juvenile case, to meet the needs of a student who is dually enrolled in the JSE program and a local school system and has an IEP or other special education plan. The board must also examine and make recommendations regarding funding for the program, including any recommendations for improvements. By December 1, 2021, the board must submit a report to the General Assembly that satisfies these requirements.

JJMU must monitor the implementation of educational programs at each residential facility and have a representative available to attend meetings of the JSE board.

Miscellaneous Provisions

The provisions of any collective bargaining agreement for staff in the JSE program must continue to apply until the bargaining unit for the staff and the State negotiate a new collective bargaining agreement.

Any State personnel or contractual employee who is employed in the Juvenile Education Services Program within MSDE on June 30, 2022, must, on July 1, 2022, be transferred to

DJS to be employed in accordance with the bill. Any State personnel or contractual employee involved in a transfer to DJS under the bill must (1) if applicable, remain in the State Personnel Management System; (2) remain in a position that is comparable to or most closely compares to their former position, without further examination or qualification; (3) receive no diminution in compensation or accumulated leave solely as a result of the transfer; and (4) if applicable, continue in the same salary grade in DJS. An individual who is an employee of the JSE program on June 30, 2022, and remains a DJS direct education staff member on July 1, 2022, must remain a member of the Employees' Pension System.

By July 1, 2022, all appropriations held by MSDE made to carry out the exclusive functions of the JSE program must be transferred to DJS. DJS must distribute the appropriations transferred to the board established under the bill, to be used in accordance with the MOU jointly agreed to by DJS and the board.

Current Law: MSDE is responsible for educating juveniles within residential facilities operated by DJS. The Director of Juvenile Services Education and the Coordinating Council for Juvenile Services Education Programs have specified responsibilities in statute regarding the development, approval, and implementation of educational programs with DJS residential facilities.

State Expenditures: The Governor's fiscal 2022 budget includes \$22.7 million in funding for the current juvenile education program as operated by MSDE. This includes \$16.3 million in general funds, \$3.5 million in federal funds, and \$2.9 million in reimbursable funds (representing cost reimbursements from local jurisdictions). Except as otherwise discussed below, no change in expenditures associated with this funding is anticipated in fiscal 2022, as MSDE is assumed to continue juvenile education operations during the transition year of fiscal 2022 until the newly established board assumes control in fiscal 2023. It is also assumed that a similar level of funding that would have been provided to MSDE is instead provided to DJS beginning in fiscal 2023, limiting a significant impact on *net* State expenditures associated strictly with JSE *program* costs.

However, general fund expenditures associated with the newly established board increase in fiscal 2022, to the extent that the board and DJS, in anticipation of the assumption of control over JSE programs in fiscal 2023, appoint or hire individuals (such as a new superintendent) related to JSE operations; such costs may be one-time in fiscal 2022 if costs can be absorbed within the funding transferred from MSDE in fiscal 2023 or ongoing. Although the positions associated with the current JSE program will simply transfer from MSDE to DJS, it is unknown in advance how the JSE program will be *fully* implemented and the extent to which current JSE staff may assume new roles and positions under the structure envisioned by the bill and ultimately implemented, while still meeting the bill's requirement to retain current employees in positions that are comparable to former positions. In addition, because DJS may contract with nonprofit parties or a local board of

education to provide juvenile educational services, it is possible that current staffing levels may be further altered beginning in fiscal 2023.

MSDE currently receives reimbursable funds from DJS; although MSDE is responsible for juvenile services education within residential facilities, DJS is the agency that bills local education agencies (LEA) to obtain cost reimbursement for these services. While this arrangement continues in fiscal 2022, beginning in fiscal 2023, DJS will retain the funding received from LEAs to represent its assumption of juvenile education services. Although the bill does not alter the requirement for local boards of education to reimburse another entity for the costs associated with providing education for juveniles in specified circumstances, the methodology under the bill (specifically, the provision requiring the average amount, as specified, to be divided by the number of actual school days required for a public school (180)) differs slightly from the current practice of DJS (which operates facilities year-round), resulting in a higher per diem. Based on a *preliminary estimate, and for illustrative purposes only*, total local government reimbursements may increase by approximately \$200,000 annually based on the new methodology. Accordingly, special fund revenues for DJS increase beginning in fiscal 2022 to represent higher cost reimbursements; MSDE reimbursable expenditures similarly increase to reflect funds received from DJS from fiscal 2022 LEA billings only.

As noted above, DJS is required to contract with a public or private entity by January 1, 2024, to conduct an empirical evaluation. DJS advises that costs associated with such evaluations can be up to \$250,000 but nonetheless anticipates being able to facilitate this requirement using the funding formerly provided to MSDE for JSE services that will now be provided to DJS beginning in fiscal 2023. However, to the extent that these contractual services are not absorbable within these funds, general fund expenditures increase.

State expenditures *may* increase further to the extent that MSDE incurs additional costs associated with the expert review process required before the end of the 2025-2026 school year. MSDE is not able to provide a specific estimate of this impact in advance but does generally note that there will be an operational impact and potentially a fiscal impact in order to incorporate DJS schools into the Expert Review Team process (which is being implemented pursuant to Chapter 36 of 2021 (Blueprint for Maryland's Future)).

DLS can conduct the required evaluations using existing resources.

Local Fiscal Effect: Although the bill does not alter the requirement for local boards of education to reimburse another entity for the costs associated with providing education for juveniles in specified circumstances, as noted above, the methodology within the bill results in a higher per diem rate. Accordingly, local expenditures increase beginning in

fiscal 2022. Local expenditures and revenues may be further impacted to the extent that the JSE board contracts with (1) a local board to assume operational control of any juvenile facility administered by the JSE board or (2) a community college to provide postsecondary education programs. Any such impact on local finances cannot be reliably estimated beforehand.

Baltimore City Public Schools advises it requires two staff to support the transfer of materials and school placements, monitor students' progress, and collaborate with DJS, and estimates associated expenditures of approximately \$175,000 annually. No other jurisdiction reported similar staffing needs.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 71 (Delegate Luedtke) - Judiciary and Ways and Means.

Information Source(s): Maryland State Department of Education; Maryland Higher Education Commission; Department of Budget and Management; Department of Juvenile Services; State Retirement Agency; Baltimore City Public Schools; Anne Arundel County Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; Frederick County Public Schools; St. Mary's County Public Schools; Department of Legislative Services – Office of Legislative Audits; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2021
rh/rhh Third Reader - April 1, 2021
Revised - Amendment(s) - April 1, 2021
Enrolled - May 11, 2021
Revised - Amendment(s) - May 11, 2021

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