

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 953
Ways and Means

(Delegate Novotny)

Parent and Guardian Rights - Education, Health, and Upbringing of Children

This bill, among other provisions, expresses the finding of the General Assembly that (1) it is a fundamental right of parents to direct the upbringing, education, and care of their minor children; (2) no important information relating to a minor child should be withheld, either inadvertently or purposefully, from the child's parent, including information relating to the child's health, well-being, and education while the child is in the custody of a local school system; and (3) it is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children. To this end, the bill (1) explicitly establishes numerous parental rights in statute and (2) requires various State and local entities to take specified actions related to such rights, particularly in regard to the education of a minor child. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures *may* increase beginning in FY 2023 for the Office of the Attorney General (OAG), as discussed below. No material effect on revenues.

Local Effect: Potential increase in local school system expenditures. Revenues are not materially affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Specific Requirements Related to Education

The bill requires each public meeting of the Maryland State Board of Education (SBE) to allow at least 10 minutes for testimony from parents and guardians of students in public schools in the State. A local board of education must also allow at least 10 minutes for testimony from parents and guardians at each public meeting.

Each local school board must, in consultation with parents, teachers, and administrators, establish and adopt a policy to promote parental involvement in the public school system. The policy must include (1) a plan for parental participation in schools to improve parent and teacher cooperation in homework, school attendance, and discipline; (2) a procedure for a parent to learn about a minor child's course of study, including the source of any supplemental educational materials; (3) a procedure for a parent to object to instructional materials and other materials, as specified; (4) a procedure for a parent to learn about the nature and purpose of clubs and activities offered at the minor child's school, including those that are extracurricular or part of the school curriculum; and (5) a procedure for a parent to learn about parental rights and responsibilities under general law, including those listed in the bill (some of which are specified below).

The above information may be provided electronically or posted on its website, and a parent may request, in writing, from the county superintendent the above information. A county superintendent must provide the information to the parent within 10 days after receiving a request. If a county superintendent denies a request for information or fails to respond within 10 days, a parent may appeal the denial or delay to the local board, as specified.

At least 14 days before the first day of each school year, each local board must provide to the parent or guardian of each student enrolled in a public school under the board's jurisdiction a written summary of the curriculum for the student's grade. The summary must be written in plain language and explain any changes in the curriculum from the immediately preceding school year.

Parental Rights – Generally

As previously noted, the bill expresses a finding of the General Assembly that parents have a fundamental right to direct the upbringing, education, and care of their minor children. The bill prohibits the State, any of its political subdivisions, any other governmental entity, or any other institution from infringing on the fundamental rights of a parent to direct the

upbringing, education, health care, and mental health of the parent's minor child without demonstrating that the action is (1) reasonable and necessary to achieve a compelling State interest; (2) narrowly tailored; and (3) not otherwise served by a less restrictive means.

The bill specifies that all parental rights are reserved to the parent of a minor child in the State without obstruction or interference from the State, any of its subdivisions, any other governmental entity, or any other institution, except as otherwise provided by law. The bill lists numerous examples of such parental rights, including the right to:

- direct the education and care of the child;
- access and review all school records relating to the child;
- make health care decisions for the child;
- access and review all medical records of the child, unless the parent is the subject of an investigation of a crime committed against the child, and a law enforcement agency or official requests that the information not be released;
- consent, in writing, before the State or any of its political subdivisions makes a video or voice recording of the child, subject to specified exceptions;
- review standardized assessment results;
- enroll the child in gifted or special education programs;
- receive a school report card and be informed of the child's attendance requirements; and
- opt out of any county-level data collection relating to the child.

An employee of the State, any of its subdivisions, or any other governmental entity that encourages or coerces – or attempts to encourage or coerce – a minor child to withhold information from the child's parent may be subject to disciplinary action by the appropriate authority. A parent of a minor child in the State has inalienable rights that are more comprehensive than those listed above, unless the rights have been legally waived or terminated. Except as otherwise provided by law, the rights of a parent of a minor child may not be limited or denied.

These above provisions may not be construed to (1) authorize a parent of a minor child to engage in conduct that is unlawful or to abuse or neglect a minor child in violation of law; (2) condone, authorize, approve, or apply to a parental action or decision that would end life; (3) prohibit a court of competent jurisdiction, a law enforcement officer, or an employee of a government agency that is responsible for child welfare from acting in their official capacity within the reasonable and prudent scope of their authority; or (4) prohibit a court of competent jurisdiction from issuing an order that is otherwise authorized by law. Furthermore, the provisions may not be construed to prescribe all rights to a parent of a minor child in the State or apply to a parental action or decision that would end life.

Current Law: Generally, statutory provisions do not explicitly address most of the specific rights of parents as set forth in the bill. However, the U.S. Supreme Court and the Maryland Court of Appeals have recognized that parents have a fundamental right to govern the care, custody, and control of their children without state interference, unless there is a showing of parental unfitness or the existence of exceptional circumstances. (See, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000), *Koshko v. Haining*, 398 Md. 404 (2007)).

School Instruction – Generally

With the advice of the State Superintendent of Schools, SBE establishes basic policy and guidelines for the program of instruction for public schools. Subject to State law and the regulations, bylaws, policies, and guidelines established by SBE, each local board of education must establish the curriculum guides and courses of study for schools in its jurisdiction. Policies, rules, and regulations for the graduation of students from Maryland public schools are established by local boards of education and SBE.

The State Standards and Frameworks defines what students should know and be able to do at each grade level. Using the standards and frameworks, local school systems develop curriculums. Teachers then develop lesson plans to teach the curriculum.

Health Care of a Minor – Generally

Immunizations: Under § 7-403 of the Education Article, the Maryland Department of Health, in cooperation with SBE and the Statewide Advisory Commission on Immunizations, must adopt rules and regulations regarding immunizations required of children entering schools. Unless the Secretary of Health declares an emergency or an epidemic of disease, a child whose parent or guardian objects to immunization on the ground of a conflict with *bona fide* religious beliefs and practices may not be required to present a physician’s certification of immunization in order to be admitted to school. The Secretary of Health must adopt related regulations.

Medical Treatment of a Minor: Generally, a parent must give consent before a physician can give medical or surgical treatment to a minor. Title 20, Subtitle 1 of the Health-General Article sets forth numerous exceptions, including providing a minor with the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment. Among other provisions, it states that a minor also has the same capacity as an adult to consent to (1) treatment or advice about drug abuse, alcoholism, venereal disease, pregnancy, contraception (other than sterilization), and the prevention of HIV and (2) physical exams and treatment of injuries from an alleged rape or sexual offense (including physical exams to obtain related evidence). Statutory provisions also specifically address parental notification prior to performing an abortion on an unmarried minor.

State/Local Fiscal Effect: State/local expenditures may increase for likely impacted entities, including local school systems, to meet the bill’s requirements.

Maryland State Department of Education and Office of the Attorney General

The Maryland State Department of Education has previously advised that it already affords the opportunity for public comment at each State board meeting.

Although OAG did not respond to a request for an estimate on this bill, it has previously indicated (on similar legislation involving parental rights) that such legislation likely results in increased litigation involving the State (*e.g.*, appeals to SBE). *If* this bill has a similar impact on potential litigation costs and requires the hiring of an assistant Attorney General, general fund expenditures increase by approximately \$157,000 annually.

Local Boards of Education

Local boards of education *may* incur expenditures to facilitate the multitude of requirements under the bill. Any specific impact depends largely on existing practices of local jurisdictions, the extent to which parents exercise any rights newly specified in the bill, and the specific policies adopted by local boards to promote parental involvement.

The Prince George’s County Public Schools and the Montgomery County Public Schools advise that the bill’s requirements can be handled with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Montgomery County Public Schools; Prince George’s County Public Schools; Department of State Police; Department of Legislative Services

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