

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 666

(Senators McCray and Waldstreicher)

Judicial Proceedings

Ways and Means

**Schools, Prekindergarten Programs, and County Boards of Education –
 Discrimination**

This bill prohibits a local board of education, public prekindergarten programs and primary and secondary schools, and nonpublic prekindergarten programs and primary and secondary schools that receive State funds, from refusing enrollment of a prospective student, expelling a current student, withholding privileges from, or otherwise discriminating against any individual because of an individual’s race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability. Further, the bill prohibits retaliatory actions against a student or parent or guardian of a student who files a complaint alleging specified discrimination. The bill establishes a complaint, mediation, and appeal process for violations. All or part of specified funding may be withheld from a board, program, or school that violates the nondiscrimination requirements. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase for the Maryland State Department of Education (MSDE) by \$42,100 in FY 2023 to implement the bill’s requirements. The Comptroller can withhold funds as directed using existing resources. The bill is not anticipated to materially affect the workload of the Judiciary, the Maryland Commission on Civil Rights, or the Office of Administrative Hearings (OAH). No effect on revenues.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	42,100	47,400	48,800	50,100	51,600
Net Effect	(\$42,100)	(\$47,400)	(\$48,800)	(\$50,100)	(\$51,600)

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

Local Effect: Local school systems can comply with the bill using existing resources. The bill is not anticipated to materially affect the workload of the circuit courts.

Small Business Effect: Minimal/none. Most private schools participating in the State programs are nonprofit.

Analysis

Bill Summary: The bill's provisions do not apply, with respect to discrimination on the basis of sex, to a prekindergarten program or school that limits admission to students of only one sex or, with respect to discrimination on the basis of disability, to a nonpublic prekindergarten program or nonpublic school that is in compliance with § 504 of the federal Rehabilitation Act of 1973 or the federal Americans with Disabilities Act, as applicable. The bill's provisions also do not apply, with respect to discrimination on the basis of religion, to a nonpublic prekindergarten program or nonpublic school that is affiliated with a religious institution that (1) provides instruction on the religious beliefs of the religion with which the program or school is affiliated; (2) declines to provide instruction in beliefs that are different from the religion with which the program or school is affiliated; (3) requires student attendance at religious events inherent to the religion with which the program or school is affiliated; (4) limits admissions or has a preference in admissions for students of certain religious beliefs (or whose families are members of the religious institution affiliated with the program or school), provided the school or program has had the limitation or preference continually since the date on which the program or school was established; or (5) grants tuition discounts for students of certain religious beliefs (or whose families are members of the religious institution affiliated with the program or school), provided the discounts were established the later of before the July 1, 2022, or since the date on which the program or school was established.

The bill's provisions do not require a nonpublic prekindergarten program or nonpublic school that is religiously affiliated (1) to enroll, retain, or extend privileges to a student or prospective student who does not meet the usual and regular qualifications requirements and standards of the program or school or (2) to adopt any rule, regulation, or policy that conflicts with the program or school's religious or moral teachings, provided that the denial, rule, regulation, or policy is not based on discrimination on the specified grounds.

Student Handbook Antidiscrimination Language

Each local board of education, public prekindergarten program and primary and secondary school, and nonpublic prekindergarten program and primary and secondary school that receives State funds must print a specified antidiscrimination statement in its student handbook. Among other things, the statement must include language noting all public and

publicly funded schools in the State operate in compliance with Title VI of the Federal Civil Rights act of 1964 and Title 26, Subtitle 7 of the Education Article of the Maryland Code.

Complaint Resolution Process

A person alleging specified discrimination may file a complaint with the State Superintendent of Schools. A complaint must specify the relief or remedy requested. A parent or guardian may submit a complaint on behalf of a minor.

On receipt of a complaint, the State Superintendent must provide notice of the complaint to the program or school and the local school board in which the public prekindergarten program or public primary or secondary school is located. The program or school and if appropriate local board must submit a response to the State Superintendent as specified.

The State Superintendent must attempt to mediate an agreement to remedy and eliminate the discrimination as specified and issue a decision to both parties as specified. If the State Superintendent finds that a local board, program, or school violated the nondiscrimination requirements established by the bill, a decision *may* require the Comptroller to withhold funding from the program or school in an amount determined by the State Superintendent in accordance with law.

A complainant alleging that a local board, program, or school did not remedy or eliminate the discrimination as agreed or required under the decision issued by the State Superintendent may reopen a complaint without filing a new complaint or engaging in mediation. If the State Superintendent finds that a local board, program, or school did not remedy or eliminate the discrimination as agreed or required, the State Superintendent must issue an updated written decision to both parties *requiring* the Comptroller to withhold funding from the program or school in an amount determined by the State Superintendent in accordance with law.

A complainant or respondent may appeal a decision by the State Superintendent to OAH as specified. An appeal hearing must be held in the county where the alleged discriminatory act occurred. If, after reviewing all of the evidence, the administrative law judge finds that the respondent has engaged in discrimination, the administrative law judge must (1) issue a decision and order stating the judge's findings of fact and conclusion of law and (2) issue and cause to be served on the respondent an order requiring the respondent to cease and desist from engaging in the discrimination and take affirmative action to effectuate the purpose of the bill.

The State Board of Education (SBE), in consultation with the State Superintendent, must adopt regulations to establish procedures for complaint processing, mediation, and enforcement and otherwise implement the requirements of the bill.

Current Law: State regulations establish that all public school students, regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability have the right to educational environments that are safe, appropriate for academic achievement, and free from harassment. State law also requires *all* individuals who are ages 5 or older and younger than age 21 to be admitted, free of charge, to the public schools of the State.

Definition of Race

Discrimination based on race is prohibited under State laws, including those prohibiting discrimination in employment, housing, and places of public accommodation. Chapter 473 of 2020 defines “race,” for the purposes of laws prohibiting discrimination, as including traits associated with race, including hair texture, afro hairstyles, and protective hairstyles; “protective hairstyle” is defined as a hairstyle that includes braids, twists, and locks.

Federal Nondiscrimination Laws

Numerous provisions of federal law prohibit discrimination in education. The federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. Private (nonpublic) schools receiving federal funds must comply with federal law provisions regarding discrimination. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex by private schools receiving federal funding. Federal law includes exceptions for the admissions practices of single-sex schools. The Americans with Disabilities Act (ADA) also prohibits state and local governments from discriminating on the basis of disability. Private schools not run or controlled by religious organizations must abide by the ADA.

State Aid to Nonpublic Schools – Nondiscrimination Requirements

No State law directly applies to private schools that receive State funds to prohibit them from discrimination. However, pursuant to language in the annual operating budget bill, a nonpublic school participating in the Aid to Nonpublic Schools Program or the Broadening Options and Opportunities for Students Today (BOOST) program must certify compliance with Title 20, Subtitle 6 of the State Government Article, which prohibits discrimination in employment. A nonpublic school participating in the programs may not discriminate in *student admissions, retention, or expulsion or otherwise discriminate* on the basis of race, color, national origin, sexual orientation, or gender identity or expression. A nonpublic

school that does not comply with these requirements must return the BOOST scholarship funds and may not charge the student tuition and fees instead. The only other legal remedy for a violation of these provisions is ineligibility for participation in the programs, as specified. The budget bill also specifies that nonpublic schools must comply with Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin.

State Aid to Nonpublic Schools – Eligibility and Funding

The State provides some aid to nonpublic schools using special funds from the Cigarette Restitution Fund, which includes the State's share of the national tobacco settlement. All of the programs are administered by MSDE. The Aid to Nonpublic Schools program is for textbooks, computer hardware, and computer software that are secular (*i.e.*, nonreligious) in character and acceptable for use in any public elementary or secondary school in Maryland for use by students in eligible schools. The fiscal 2023 budget, as enacted, includes \$6.0 million in such funding; the program has been funded at this level in recent years. MSDE assures that the purchases are made from a list of qualified vendors and that the savings are used by the schools to reduce the cost of textbooks and computer hardware and software for students. To be eligible to participate in the program, a nonpublic school must hold a certificate of approval or be registered with SBE; not charge more tuition than the statewide average per pupil expenditure by local education agencies (LEAs), as calculated by the department; and meet the nondiscrimination requirements as specified above.

The State also provides some scholarship aid for students who are eligible for free and reduced-price meals to attend nonpublic schools through the BOOST program, subject to several specified conditions in the budget bill. The amount of a scholarship may not exceed the statewide average per pupil expenditure by LEAs or the tuition of the nonpublic school, whichever is less. To be eligible to participate in the program, a nonpublic school must participate in the Aid to Nonpublic Schools program and comply with the nondiscrimination requirements described above. The fiscal 2023 budget, as enacted, includes \$10.0 million from the Cigarette Restitution Fund for the program.

In addition, the State provides capital funding for the Nonpublic Aging Schools Program. To be eligible to participate in the program, like BOOST, a nonpublic school must participate in the Aid to Nonpublic Schools program and comply with the nondiscrimination requirements. Other eligibility requirements are specified in Chapter 9 of 2018 (fiscal 2019 capital budget bill). The fiscal 2023 capital budget, as enacted, includes \$3.5 million for the program, the same funding level as recent years.

In fiscal 2018, funding awards were rescinded from a Harford County Lutheran school after the BOOST Advisory Board was alerted that language in the school's handbook reserved the right to deny admission to gay and transgender students.

Publicly Funded Prekindergarten

In all jurisdictions, local school systems are required to provide publicly funded half-day prekindergarten to four-year-old children from families with incomes at or below 185% of the federal poverty level (FPL). Jurisdictions also provide prekindergarten services for three- and five-year-old students.

Chapter 2 of 2015 established the Prekindergarten Expansion Grant program, which offers competitive grants to qualified public and private prekindergarten providers to serve four-year-olds from families with incomes at or below 300% FPL. The grants also allow programs to improve existing slots by converting half-day slots to full-day slots, limiting class sizes, and providing professional development among other efforts. Beginning in 2015, enrollment includes publicly funded slots in private programs. In 2020, 927 children were served in publicly funded slots in private programs, compared to 421 in 2015. Chapters 6 and 607 of 2017 further increased State funding for prekindergarten by providing supplemental grants to local school systems in which all prekindergarten students were provided full-day prekindergarten (Baltimore City and Garrett, Kent, and Somerset counties received these grants) for fiscal 2018 through 2020. The fiscal 2023 budget, as enacted, includes \$26.6 million in special funds for the Prekindergarten Expansion Grant program and an additional \$144.1 million in prekindergarten formula grants under the Blueprint for Maryland's Future.

State Superintendent Enforcement

The State Superintendent of Schools must enforce the provisions of the Education Article that are within his or her jurisdiction and the bylaws rules, and regulations of SBE. If an educational institution or local board of education violates any of these provisions, the State Superintendent, by written notice, may require the State Comptroller to withhold from that institution or board (1) all or any part of an appropriation made by the General Assembly and (2) all or any part of any other payment from funds budgeted by the State.

State Expenditures: MSDE advises that the agency requires additional staffing to process discrimination complaints and appeals, conduct mediations, and direct the Comptroller to administer fiscal penalties as required by the legislation. However, because MSDE has not previously engaged in such activities, it cannot reliably estimate costs. The Department of Legislative Services (DLS) notes that the bill primarily codifies annual budget language regarding nondiscrimination requirements. Further, DLS notes that processing complaints and conducting mediation are new responsibilities mandated by the bill, and the scale at

which MSDE will have to process these complaints is likely to be small. Additionally, the largest costs are likely to be legal costs for those complaints that are appealed and, therefore, primarily borne by OAH, which has advised that existing resources can meet the requirements of the bill. Therefore, DLS estimates that MSDE requires one half-time regular staff position to fulfill the bill’s requirements. However, if the volume of complaints is large, additional staff may be needed.

General fund expenditures increase for MSDE by \$42,114 in fiscal 2023. The estimate reflects the cost of a half-time management associate to manage complaints, with a 90-day start-up delay from the bill’s July 1, 2022 effective date. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Out-year estimates reflect annualization and ongoing expenses.

Regular Position	0.5
Salary and Fringe Benefits	\$35,168
One-time Start-up Costs	6,548
Ongoing Operating Expenses	<u>398</u>
Total FY 2022 State Expenditures	\$42,114

Additional Information

Prior Introductions: SB 98 of 2021, a similar bill, received a favorable report from the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 155, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. SB 993 of 2020, another similar bill, had a hearing in Judicial Proceedings, but no further action was taken. Its cross file, HB 1204, passed the House with amendments and was referred to Judicial Proceedings, but no further action was taken.

Designated Cross File: HB 850 (Delegate Wilkins, *et al.*) - Ways and Means.

Information Source(s): Maryland State Department of Education; Comptroller’s Office; Office of Administrative Hearings; Prince George’s County Public Schools; St. Mary’s County Public Schools; Baltimore City Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2022
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