

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 579 (Senator Reilly, *et al.*)  
Education, Health, and Environmental Affairs

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**Education - Evaluation of Teachers and Principals - Implementation Timeline**

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This emergency bill requires the State Board of Education to determine the implementation timeline for the evaluation of teachers and principals in the public schools in the State; however, the timeline determined may not implement an evaluation system before June 30, 2015. Thus, the bill delays implementation of the teacher and principal evaluation system until at least the 2015-2016 school year.

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**Fiscal Summary**

**State Effect:** The bill's requirements will put the State out of compliance with the federal Race to the Top (RTTT) grant and may jeopardize at least \$37.9 million of the State's \$250.0 million in RTTT grant funds. The bill's requirements will also put the State out of compliance with the State's federal Elementary and Secondary Education Act (ESEA) waiver, potentially jeopardizing up to \$280.9 million in federal Title I and other federal funds. The State could also revert to the provisions of the federal No Child Left Behind Act of 2001 (NCLB) due to being out of compliance with the ESEA waiver.

**Local Effect:** Local school system federal RTTT and Title I revenues may be jeopardized. If the State reverts to the provisions of NCLB due to being out of compliance with the ESEA waiver, local school system expenditures may increase.

**Small Business Effect:** None.

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## Analysis

**Current Law/Background:** As of the 2013-2014 school year, 22 local school systems have implemented new teacher and principal evaluation systems as required by RTTT grant. The remaining two systems (Frederick and Montgomery) are required by Maryland's ESEA flexibility waiver to implement new teacher and principal evaluation systems by the 2014-2015 school year.

### *Education Reform Act*

The Education Reform Act of 2010 (Chapter 189) made significant changes to Maryland's teacher and principal evaluation process and helped the State to land a \$250 million federal RTTT grant. The Act required the State Board of Education to adopt regulations establishing general standards for performance evaluations of certificated teachers and principals and requires student growth to be a significant component in the evaluations. Recommendations for the new educator evaluation systems were developed by the Maryland Council for Educator Effectiveness (MCEE), which the Governor established by executive order on June 1, 2010. The redesign of teacher and principal evaluations was one of the primary reforms identified in Maryland's RTTT application. Within the reform area of great teachers and leaders, Maryland agreed to implement new teacher and principal evaluation systems by 2012-2013, later amended with agreement of the U.S. Department of Education (USDE) to 2013-2014.

The Act required each local board of education to establish performance evaluation criteria for certificated teachers and principals based on the general standards adopted by the State Board of Education that are mutually agreed on by the local school system and the exclusive employee representative. If the local school system and the exclusive employee representative fail to mutually agree, the model performance evaluation criteria adopted by the State Board of Education take effect in the local jurisdiction six months following the final adoption of the regulations.

### *No Child Left Behind Act Requirements and Penalties*

Under NCLB, 100% of students had to achieve proficiency on statewide assessments by 2014, which no state is able to meet. If 100% of students in a school fail to achieve proficiency on statewide assessments in 2014, then it will fail to meet adequate yearly progress (AYP). A school that fails to meet AYP for two consecutive years will be identified for "school improvement," and must draft a school improvement plan, devote at least 10% of federal funds provided under Title I of NCLB to teacher professional development. Schools that fail to make AYP for a third year are identified for corrective action, and must institute interventions designed to improve school performance from a list specified in the legislation. Schools that fail to make AYP for a fourth year are

identified for restructuring, which requires more significant interventions. If schools fail to make AYP for a fifth year, they must implement a restructuring plan that includes reconstituting school staff and/or leadership, changing the school's governance arrangement, converting the school to a charter school, turning it over to a private management company, or some other major change.

Maryland had 324 schools in improvement (22.4% of all public schools) in the 2011-2012 school year, including 102 schools that had not met AYP for more than six consecutive years. Some of these schools did not meet AYP due to the performance of special education students who are held to the same 100% proficiency standard.

### *Maryland ESEA Flexibility Waiver*

Maryland submitted its ESEA flexibility waiver request in February 2012 and was approved on May 29, 2012. Maryland is one of 34 states and the District of Columbia to receive approval of its ESEA flexibility waiver request.

One specific requirement to receive both a RTTT grant and an ESEA waiver was a plan to improve effective instruction and leadership. To this end, Maryland's ESEA waiver request included the State's new teacher and principal evaluations system, which was established by the Education Reform Act of 2010 (Chapter 189) and subsequent regulations (discussed further below). As a result, under Maryland's current ESEA flexibility waiver, all local school systems must implement new teacher and principal evaluation systems that assign "significant value" to measurable student growth by 2013-2014, except for Frederick and Montgomery counties, which did not participate in RTTT and, thus, have an additional year to meet this requirement.

Maryland's current approved ESEA flexibility waiver expires at the end of 2013-2014 school year. The Maryland State Department of Education (MSDE) reports that it has been meeting with education stakeholders over the past several months to develop a one-year ESEA flexibility waiver extension that USDE has offered as an option for states to request.

One of the key provisions in the extension request will be delaying the use of student growth data on State assessments to count for personnel decisions for teacher and principal evaluations until the 2016-2017 school year. Specifically, MSDE plans to request that the State student growth data will not count for personnel decisions for the 2013-2014 school year; will only be used to inform, but not determine, personnel decisions during the 2014-2015 and 2015-2016 school years; and will count for personnel decisions beginning in the 2016-2017 school year.

MSDE plans to submit a draft extension request to the State Board of Education at its February meeting with approval anticipated at the March meeting and subsequent submissions to USDE. However, per direction from USDE, MSDE cannot submit its extension request until it receives a written report with the results of a recent USDE Part B monitoring visit of the current ESEA waiver. The monitoring was completed on December 17, 2013, and MSDE has not yet received the written report. The extension request must address any concerns noted in the monitoring report. Per USDE, the ESEA flexibility waiver extension request must be submitted within 60 days of receipt of the Part B monitoring report, so that the request can be approved by the end of this school year.

It is important to note that USDE has offered states additional flexibility to delay personnel decisions based on student growth using State assessments associated with new teacher and principal evaluation systems but has not offered flexibility on the timeline for implementation of new teacher and principal evaluation systems.

#### *Educator Evaluation System Changes Based on 2011-2012 Pilot*

During the 2011-2012 school year, seven local school systems (Baltimore City and Baltimore, Charles, Kent, Prince George's, Queen Anne's, and St. Mary's counties) piloted new teacher and principal evaluation systems. Each system selected teachers at multiple grade levels and subject areas to participate. On June 1, 2012, MCEE issued final recommendations for a statewide educator evaluation system based on feedback from the pilot systems. While the initial student growth measure recommendation combined State growth measures (30%) and local growth measures (20%), stakeholder feedback indicated difficulty in distinguishing between State and local measures for grade and content areas in which State assessments are administered and local assessments are not available. In response, MCEE endorsed a 50% blended State/local growth measure and the mandatory use of the State assessments among the growth measures used in grades and subjects in which they are administered.

In addition, though MCEE initially recommended that teachers receive an effective rating in the student growth measure to be rated effective overall, the pilot systems requested equal weighting of the student growth and professional practice components, and MCEE agreed.

In response to concerns regarding the cost of annual evaluations, MCEE agreed to conduct evaluations within a three-year cycle. All teachers and principals will be evaluated on both professional practice and student growth in the first year. Teachers rated as ineffective during the first year, nontenured teachers, and principals will receive annual evaluations on professional practice and student growth during the cycle's remaining two years. Tenured teachers rated highly effective or effective in the first year

will receive annual student growth evaluations only, with their professional practice rating carried forward and included in the total rating for the last two cycle years.

Finally, though initial MCEE recommendations established three tiers of evaluation ratings (highly effective, effective, and ineffective), some pilot systems suggested adding a developing/approaching effectiveness tier. MCEE agreed that a local school system could choose to adopt the fourth category.

### *State Board of Education Adopts Evaluation Regulations*

On June 26, 2012, the State board adopted regulations implementing MCEE's evaluation recommendations, as required by the Education Reform Act. The regulations require that (1) teacher and principal evaluations meet the minimum standards set forth in the regulations and (2) student growth account for 50% of evaluations in all local school systems that signed the RTTT application.

The regulations also specify that if a local school board and the exclusive employee representative do not reach agreement on an evaluation system, the school board must adopt the Model State Performance Evaluation Criteria, 20% of which is based on State test scores for grades 3 to 8 content areas. In all evaluation systems, the student growth component will account for 50% and must include multiple measures, such as aggregate class growth scores, student learning objectives, and a schoolwide performance index. The professional practice component will also count for 50% of an evaluation. For teachers, this component includes planning and preparation, classroom environment, instruction, and professional responsibility. For principals, the component will include the outcomes in the Maryland Instructional Leadership Framework and outcomes developed by the Interstate School Leaders and Licensure Consortium. The regulations sunset on September 30, 2014, subject to review by the State board and re-promulgation of the regulations.

**State Revenues:** Prohibiting implementation of the evaluation of teachers and principals until the 2015-2016 school year may jeopardize at least \$37.9 million of the \$250.0 million in federal RTTT grant funds since these requirements put the State out of compliance with the grant's requirements. As part of RTTT grant, the State committed to reforms in four major areas: standards and assessments; data systems to support instruction; great teachers and leaders; and turning around the lowest-performing schools, as well as, to strengthen science, technology, engineering, and math (STEM) programs. Additionally, local school superintendents and presidents of local boards of education in 22 local school systems signed Memorandums of Agreement agreeing to participate in the State's RTTT plan. Within the reform area of great teachers and leaders, Maryland agreed to implement new teacher and principal evaluation systems using student growth by 2012-2013, later amended to 2013-2014.

On December 6, 2012, USDE sent the Governor a letter approving RTTT amendment related to teacher and principal evaluation with certain conditions. The letter includes a paragraph that states, “If Maryland does not substantially comply with the conditions outlined above, MSDE may take appropriate enforcement action which may include initiating procedures to withhold up to \$37.9 million associated with projects in the great teachers and leaders section of the State’s Race to the Top plan.” Thus, delaying implementing the new teacher and principal evaluation system until 2015-2016 may result in USDE requiring MSDE to repay at least \$37.9 million of the State’s \$250 million RTTT grant.

The bill’s requirements will also put the State out of compliance with the State’s federal ESEA waiver, which applies to all 24 local school systems. To receive an ESEA waiver, Maryland had to agree to implement new teacher and principal evaluation systems no later than the 2013-2014 school year. Thus, potentially jeopardizing up to \$280.9 million in federal Title I and other federal funds as shown in **Exhibit 1**.

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**Exhibit 1**  
**Potential Federal Penalty**  
**(\$ in Millions)**

**Federal Funding Programs**

Title I Administrative Funds	\$1.8
Maryland Assessments FY 2013	47.1
School Improvement Grants	6.6
Title III of the ESEA	1.7
Part B of the IDEA	189.7
Rural Schools and Migrant education	0.7
Professional Development such as Title II	33.3
<b>Total</b>	<b>\$280.9</b>

Source: FFIS Grants database 2012-2013 post-sequester

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**State Expenditures:** Due to being out of compliance with the ESEA flexibility waiver, the State may also revert to all of the requirements of NCLB. After Maryland received the ESEA flexibility waiver, MSDE adopted a new accountability system for school progress called the School Progress Index to replace the NCLB performance measures (*e.g.*, AYP). Reverting back to NCLB would require MSDE to reinstate and implement the previous accountability system. Since all or nearly all schools would fail to meet 100% proficiency in 2014, MSDE would need to administer the school improvement process for up to 1,454 public schools across the State. It is unknown how much this may cost and whether it could be handled with existing resources and staff.

**Local Revenues:** Local school system federal RTTT and federal Title I revenues may be jeopardized. The 22 participating local school systems received \$125.0 million in RTTT funds. Of the \$280.9 million in Title I and other potentially impacted federal funds received by the State in 2013-2014, at least \$196.3 million passes through to the local school systems

**Local Expenditures:** If the State reverts to the provisions of NCLB, local school system expenditures may increase. Under NCLB, 100% of students will need to score proficient on State assessments by the spring 2014, a standard that will be impossible for almost every school in every state to meet. If a school fails to meet that standard, it will be determined to have failed to meet AYP. Thus, almost all of Maryland's schools will be put in the school improvement process, which will require significant interventions including tutoring services for all Title I students and staffing changes. It is unknown exactly how much it will cost for putting nearly all of the schools in the State through school improvement process, but it is assumed that it will be significant. In addition, the process could be potentially disruptive for students and staff.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, Carroll and Queen Anne's counties, Department of Legislative Services

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