

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 1240  
 Ways and Means

(Delegate Kaiser, *et al.*)

Education, Health, and Environmental Affairs

Individualized Education Programs - Studies

This bill requires the Maryland State Department of Education (MSDE) to, by July 1, 2018, contract with an outside entity to conduct a study of the individualized education program (IEP) process in the State. MSDE must report the findings and recommendations of the consultant to the General Assembly by July 1, 2019. In addition, MSDE, in consultation with each local school system, must review and assess staff allocations and resources that are available to assist the parents and guardians of children with disabilities to participate in the IEP process, as well as current population densities of children with IEPs and of special education teachers. The findings and recommendations from MSDE’s review and assessment must be submitted to the General Assembly by December 31, 2018.

The bill takes effect June 1, 2017, and terminates May 31, 2020.

Fiscal Summary

**State Effect:** General fund expenditures increase by approximately \$901,700 in FY 2018 through 2020 to cover MSDE contractual costs to perform the required study and review.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	255,500	521,200	125,000	0	0
Net Effect	(\$255,500)	(\$521,200)	(\$125,000)	\$0	\$0

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

**Local Effect:** None. Local school systems can cooperate with the conduct of the required study and assessments using existing resources.

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Outside Study of the Individualized Education Program Process in the State*

By July 1, 2018, MSDE, in consultation with the Department of Budget and Management and the Department of Legislative Services, must contract with a public or private entity to conduct an independent study of the IEP process in the State, including the procedures relating to the identification, evaluation, and educational placement of a child, the provision of a free and appropriate education, and related dispute resolution procedures.

The consultant that conducts the study must seek input from special education teachers, special education advocates, and special education organizations. At a minimum, the study must review and assess:

- how local school systems spend their special education funds and allocate their teaching and family support services staff;
- the effectiveness of special education family support services provided by local school system staff members; and
- how local school systems use technical assistance provided by MSDE to assist parents in understanding their rights and responsibilities in the IEP process.

The study must identify best practices for retaining special education teachers and identify and highlight the best practices currently used by MSDE staff, local system staff, and other State agency staff as part of the IEP process in the State. The study must also make recommendations for:

- ensuring that special education funds are being spent cost effectively;
- ensuring that local school systems are effectively allocating their teaching and family support services staff to improve the education achievement of special education students;
- clarifying and simplifying the IEP process to enable parents and guardians to more easily understand their rights and responsibilities in the process; and
- modifying the administrative goals, objectives, and strategies of teachers and IEP teams to make them more efficient and cost effective in their delivery of services to special education students, including potential reductions in caseloads and recordkeeping.

The Governor must include sufficient funds in the State budget for the appropriate fiscal years for MSDE to cover the costs of conducting the study.

*Maryland State Department of Education Review and Assessment of Staff Allocations and Resources*

MSDE, in consultation with each local school system, must review and assess the current allocation of MSDE staff, local school system staff, and other State agency staff and supporting resources that are available to assist the parents and guardians of children with disabilities to participate in the IEP process, including all procedures relating to the identification, evaluation, and educational placement of a child, the provision of a free and appropriate education, and related dispute resolution procedures.

MSDE must also review and assess the current population density of children with IEPs and of special education teachers in each local school system and in geographical regions in the State and make recommendations for reallocating public agency staff and resources on a geographical basis so that public agencies may more effectively assist the parents and guardians of children with disabilities to participate in the IEP process and resolve disputes concerning a child's special education services or program more timely and cost effectively.

**Current Law:** 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 IEP specific to the individual needs of the student. Local school systems are required to make a free appropriate public education available to students with an IEP. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

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. A parent of a child with disabilities may file a due process complaint with 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. The *standard* of proof in the due process hearings addressed by the bill is the preponderance of evidence, as specified by the State’s Administrative Procedures Act, which governs resolutions of disputes through administrative proceedings. (The party with the *burden* of proof must meet this standard to prevail.)

Chapter 671 of 2013 established a Commission on Special Education Access and Equity to study the extent to which parents and guardians of students with disabilities are made aware of their rights under IDEA and State law and regulations relating to children with disabilities and potential ways to improve the awareness of these rights. Among other matters, the commission was required to study concerns about equity between the parties in special education due process hearings and potential methods for improving the process.

### **Background:**

#### *Special Education and Nonpublic Placements*

The State’s special education formula provides additional aid based on the number of students with disabilities in each school system. The formula is calculated using special education enrollment and 74% of the per pupil foundation amount. The State also funds a share of the cost of placing students with special needs in nonpublic school facilities. The costs vary depending on the number of students and the cost of the services provided for students placed in the program. The fiscal 2018 State budget includes \$284.9 million in State special education formula aid, as well as for \$123.6 million for nonpublic placements.

#### *Commission on Special Education Access and Equity*

According to the report of the Commission on Special Education Access and Equity, dated June 30, 2014, the commission recommended a statement calling for, in part, “...a greater emphasis on the role of parents as a valued and integral part of the IEP team,” and indicated that the recommendation could be achieved through the issuance of guidance. The commission also recommended that the State “study the lack of access to legal advocacy and other resources for low income families who otherwise would not be able to afford representation at all levels of the special education process from IEP meeting through due process, and to make recommendations to address this issue.”

**State Fiscal Effect:** General fund expenditures increase by \$255,500 in fiscal 2018, which accounts for a six-month delay following the bill’s June 1, 2017 effective date in order to hire contractual staff to conduct the review and assessment. General fund expenditures increase by \$521,200 in fiscal 2019 and \$125,000 in fiscal 2020, which reflects costs for three months following the respective due dates for submission of the two required reports.

This estimate includes \$500,000 for a consultant to conduct the required IEP process study, with the costs spread out over two years (\$375,000 in fiscal 2019 and \$125,000 in fiscal 2020). In addition, approximately \$401,700 is included to cover the cost of MSDE hiring three contractual employees in fiscal 2018 and 2019 to perform the required review and assessment. The estimate includes salaries, fringe benefits, and one-time start-up costs in fiscal 2018, and the elimination of one-time costs and ongoing operating expenses in fiscal 2019.

	<u><b>FY 2018</b></u>	<u><b>FY 2019</b></u>	<u><b>FY 2020</b></u>
Independent Consultant		\$375,000	\$125,000
Salaries and Fringe Benefits	\$232,172	145,272	
Operating Expenses	<u>23,326</u>	<u>938</u>	
<b>State Expenditures</b>	<b>\$255,498</b>	<b>\$521,210</b>	<b>\$125,000</b>

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Budget and Management; Department of Juvenile Services; Office of Administrative Hearings; Department of Legislative Services

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