# Department of Legislative Services

Maryland General Assembly
2020 Session

## FISCAL AND POLICY NOTE
## First Reader

Senate Bill 418 (Senator Serafini)

Education, Health, and Environmental Affairs
and Budget and Taxation

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**Education Savings Account Program - Established**

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This bill establishes the Education Savings Account Program (ESAP), administered by the Maryland State Department of Education (MSDE). MSDE must qualify private financial management firms or similar entities to manage the accounts. Subject to specified requirements, ESAP provides State grants to the accounts of parents of eligible students to provide for the education and specified related expenses of the students at qualifying private schools. Amounts deposited to the accounts are deducted from the public school district's State and local funds, but the systems must still reimburse the State for their local share of education funding and provide transportation to the private schools. **The bill takes effect July 1, 2020.**

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## Fiscal Summary

**State Effect:** General/special fund expenditures increase substantially beginning in FY 2021; the amount cannot be reliably estimated at this time, but could easily exceed $25 million annually, assuming moderate enrollment in ESAP. General fund revenues increase by about half of that amount from local governments reimbursing the State for the local share of education funding, mitigated to some extent by revenue losses from contributions to qualified college savings plans. Higher education revenues may increase from ESAP distributions. MSDE can adopt required regulations using existing resources. **This bill establishes a mandated appropriation beginning in FY 2022.**

**Local Effect:** Local expenditures increase substantially beginning in FY 2021 to reimburse the State for local shares of education funding and to provide transportation to students enrolled in ESAP. Local community college revenues may increase from ESAP distributions, offset by revenue losses from contributions to qualified college savings plans. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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# Analysis

**Bill Summary:**

*Eligible Students and Qualifying Schools*

A parent of an eligible student must be qualified for a State grant under ESAP if the parent signs an agreement with MSDE agreeing:

- to provide an education for the eligible student in, at a minimum, reading, grammar, social studies, and science; and
- not to enroll their eligible student in a public school or public charter school except for contracted services provided at a public school or within a local school system.

"Eligible student" means a student who is a legal resident of the State and is eligible to enroll in a public school in the State.

"Qualifying school" means any private school that provides instruction to primary or secondary students and has notified MSDE of its intention to participate in ESAP and comply with its requirements.

*Required Account Funding, County Reimbursements, Equivalent Reduction of Aid to Education Funding*

On a quarterly basis, the State must deposit into an account of an eligible student an amount equivalent to the per pupil amount of State and local funds for each education program for which the eligible student would be included in the enrollment count for the calculations of State aid to education. The eligible student must be counted in the enrollment count used for purposes of calculating the State and local funding for education programs. The county must reimburse the State for the local funding required under the programs. The amount deposited in the education savings accounts must be deducted from the amount of State and local funds provided to the resident school district under the State aid to education programs.

*Required Records and Transportation Funding*

Each resident school district must provide a qualified school or provider that has admitted an eligible student with a complete copy of the student's school record in compliance with the federal Family Educational Rights and Privacy Act.

The resident school district must provide transportation for an eligible student to and from the qualifying school or provider in the same manner it is required to provide transportation to a student attending a public school in the district. The State and county must provide transportation funding to the resident school district for each eligible student by including the student in the full-time equivalent student (FTES) enrollment used in the student transportation funding formulas.

*Use of Account Funds*

The funds in an education savings account may be used only for education expenses approved by MSDE; however, the bill specifies a list of authorized uses, including:

- tuition and fees at a qualifying school;
- payment for private tutoring;
- tuition or fees for a nonpublic online learning program;
- fees for specified examinations;
- contributions of up to $2,000 annually to the eligible student's qualified 529 or Coverdell education savings accounts;
- education services from a licensed or accredited provider for eligible students with disabilities or with special needs;
- tuition and fees at an eligible postsecondary institution;
- tuition, fees, and instructional materials at a career and technical education provider;
- contracted education services provided at a public school or within a local school system;
- fees for managing an account;
- transportation costs up to $1,000 annually; and
- any other education expenses approved by MSDE.

A qualifying school, private tutoring provider, eligible postsecondary institution, or other education provider may not refund, rebate, or share the grant provided under ESAP with a parent or eligible student.

If the costs of education programs and services exceed the amount in the account, the parents may cover those costs.

MSDE must provide written notice to parents on the eligible uses of account funds, the responsibilities of the parent, and the duties of the department.

*Administration and Management of Program*

MSDE must administer ESAP but must also qualify private financial management firms or similar entities to manage accounts. MSDE must establish reasonable fees based on market rates and may conduct or contract for the auditing of accounts. At a minimum, a random sampling of accounts must be audited annually. MSDE must determine a parent ineligible for the program if substantial misuse of account funds occurs and may refer such misuse to the Office of the Attorney General for further investigation.

MSDE or an organization chosen by the department must (1) ensure compliance with student privacy laws; (2) collect all assessment results; (3) publicly provide related assessment results on a publicly available website beginning with the third year of assessments; and (4) annually administer a satisfaction survey to parents of eligible students with an account.

Each year, MSDE must notify eligible students and parents of the schools participating in the program. MSDE must have a form for parents of students to submit to the department to determine eligibility.

MSDE may disqualify a school or provider from the program if the school or provider has regularly failed to comply with the requirements of the bill or failed to provide an eligible student with the education services funded by an education savings account.

*Duties of Qualifying School and Parents*

A qualifying school must meet specified requirements related to health, safety, nondiscrimination, and financial responsibility. To ensure appropriate expenditure of funds, a qualifying school must provide parents with a receipt for all qualifying expenditures, and, if the school receives at least $50,000 during the school year, demonstrate the school’s financial viability by filing with MSDE either (1) a surety bond for the amount of anticipated funds each year or (2) specified financial information that demonstrates the school’s ability to pay.

Parents must ensure that all eligible students in grades that require an assessment under the State’s assessment standards take either the State assessment or a similar national assessment, and they must report the results to MSDE or a managing organization each year, subject to specified requirements. Notification must also be provided when an eligible student graduates high school.

*Qualifying Schools Retain Autonomy*

A participating private school has autonomy and is not an agent of the State. MSDE or any other State agency is prohibited from regulating the educational program of a qualifying school or education provider that accepts funds from an education savings account. Establishing the program does not expand the regulatory authority of MSDE or any local board of education except to carry out the provisions of the bill. MSDE or another State agency may not limit the ability of qualifying schools or education providers to provide for the educational needs of students.

**Current Law:** The State generally does not provide public-school equivalent funding for students attending private schools. Students attending private schools are not included in the enrollment counts when determining funding under State aid to education formulas. With the exception of students with disabilities, who are placed by the school systems in appropriate nonpublic schools, local school systems are not required to provide transportation to students attending private schools.

*State Aid to Education – Generally*

The great majority of direct State aid to public schools (excluding teachers' retirement) is determined by funding formulas found in Title 5, Subtitle 2 of the Education Article. Together with some more recent enactments, these funding formulas were set forth in the Bridge to Excellence in Public Schools Act (Chapter 288 of 2002). The formulas are in part based on the adequacy model, which entails three components. The first is a uniform base cost per pupil that is necessary to provide general education services to students in every school system. The second component of adequacy involves adjustments for the additional costs associated with educating three at-risk student populations: special education students; students eligible for free and reduced-price meals; and students with limited English proficiency. The third component of adequacy is an adjustment that accounts for differences in the local costs of educational resources.

The majority of State education aid formulas also entail wealth equalization across counties, compensating for differences in local wealth by providing less aid per pupil to more wealthy counties and more aid per pupil to less wealthy counties. Although most State aid formulas are designed to have the State pay roughly one-half of program costs statewide, the State's share for the less wealthy counties is higher than 50%, and the State's share for more wealthy counties is lower than 50%.

**Background:** As of September 2018, there were approximately 106,000 students enrolled in a private/nonpublic K-12 schools in the State. Another 17,000 were enrolled in private nursery schools.

*School Choice*

States have experimented with school choice in a variety of forms, including charter schools, magnet schools, tax credits and deductions, vouchers and scholarships, and home schooling. The issue is also often broken down into private school choice and public school choice. School vouchers, which are fairly similar in function to the education savings accounts established by the bill, are state-funded scholarships that pay for students to attend private school rather than public school. Private schools must meet minimum standards established by legislatures in order to accept voucher recipients. School voucher programs typically target subgroups of students.

**State Fiscal Effect:** General/special fund expenditures increase substantially beginning in fiscal 2021 to provide State aid for education funding and related transportation funding to ESAP accounts; the amount cannot be reliably estimated at this time but could easily exceed $25 million annually, assuming moderate enrollment in ESAP. For context, the fiscal 2020 education aid per pupil is $14,135 on average: $6,477 State and $7,658 local, with significant county level variation.

Expenditures include MSDE administrative costs, which are unknown at this time, and contract management fees, which the agency roughly estimates at about $800,000 annually, but the majority of the spending is for direct transfers to ESAP accounts. General fund revenues increase by about half of that amount from local governments reimbursing the State for the local share of education funding.

This estimate assumes that MSDE is *not* required to deposit the per pupil FTES amount for *all* students attending private school in a particular year and that funds are only deposited into ESAP accounts for students who go through the application/qualification process. If the bill is interpreted to immediately require State funding for an additional 106,000 or more students, then general/special fund expenditures increase by more than $65 million annually beginning in fiscal 2021.

Up to $2,000 annually per ESAP account may be deposited into a qualified college savings plan each year. Contributions are eligible for a State tax deduction of up to $2,500 per account. Assuming an average State tax rate of 5.0%, each maximum ESAP deposit reduces general fund revenues by $100, to the extent that those contributions would not otherwise have been made. The magnitude of the effect cannot be reliably estimated at this time.

Higher education revenues may increase from ESAP distributions for qualified expenses.

**Local Fiscal Effect:** Local expenditures increase substantially beginning in fiscal 2021 to reimburse the State for local shares of education funding and to provide transportation to students enrolled in ESAP. The cost for each county depends on the county's share of per pupil funding and the number of ESAP accounts. High-uptake scenarios in large counties could be substantial. For example, Montgomery County estimates the total annual cost to the county – if all of its nonpublic students were funded through ESAP accounts under the bill – at $250 million for education funding and at least $9 million for transportation funding.

Local community college revenues may increase from ESAP distributions.

As noted above, up to $2,000 annually per ESAP account may be deposited into a qualified college savings plan each year. Contributions are eligible for a State tax deduction of up to $2,500 per account. Assuming an average local tax rate of 3.0%, each maximum ESAP deposit reduces local revenues by $60, to the extent that those contributions would not otherwise have been made. The magnitude of the effect cannot be reliably estimated at this time.

**Small Business Effect:** Additional funding through ESAP supports local private schools, tutors, and other private educational programs, many of which may be small businesses.

**Additional Comments:** MSDE has identified several considerations for implementation, such as (1) the treatment of students who go back and forth between public and private schools; (2) the timing delay for determining funding based on enrollment; (3) how mid-year student transfers are handled; (4) the practical issues surrounding determining eligibility; and (5) the nature of and restrictions on ESAP accounts.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** HB 1552 (Delegate Boteler, *et al.*) - Ways and Means.

**Information Source(s):** Maryland State Department of Education; College Savings Plans of Maryland; Baltimore City Community College; University System of Maryland; Baltimore City; Anne Arundel, Howard, and Montgomery counties; Department of Legislative Services

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