

FAVORABLE
Senate Bill 1043
Education – Public School Employers and Employees – Subcontracting for
Services

Senate Education, Energy, and the Environment Committee
March 6, 2024

Christian Gobel
Government Relations

The Maryland State Education Association supports Senate Bill 1043. Senate Bill 1043 establishes that it is the public policy of the State to utilize public school employees for the delivery of instructional and non-instructional work and services in public schools in contrast to subcontracting out this work to the private sector. Additionally, the legislation seeks to impose more transparency and accountability on public school employers when they attempt to subcontract out work or services performed by public school employees. Senate Bill 1043 accomplishes these dual policy goals by: i) enhancing workplace protections for public school employees; ii) making the approval of subcontracting agreements contingent on the inclusion of certain standards and provisions in the agreement; iii) requiring subcontractors to submit certain information to public school employers in their bids; and iv) promoting more open and transparent decision-making processes from public school employers when considering subcontracting essential school services.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

Senate Bill 1043 enhances workplace protections for public school employees by prohibiting the subcontracting of work or services performed by public school employees during the term of a collective bargaining agreement (CBA), subject to certain exceptions. Following the expiration of a CBA, if an employer attempted to

enter into a subcontracting agreement, then the employer must: i) provide written notice to an impacted exclusive representative and the Public Employee Relations Board (PERB) within ninety days before the employer request bids for the subcontracting agreement; ii) meet and consult with the exclusive representative regarding the decision; and iii) negotiate the effects of the decision with the exclusive representative. However, an employer may subcontract out work during the term of a CBA if the subcontracting agreement is for services not available from the public school employer or cannot be performed by public school employees, provided that the employer adhere to other requirements in the bill.

Subcontracting, the practice of replacing employees in a bargaining unit with the employees of a subcontractor to perform the same work under comparable conditions of employment, has long been ruled a mandatory subject of bargaining in the private sector under the National Labor Relations Act.¹ This legal duty obligates the employer to provide notice to the union and provide an opportunity to bargain the decision and the effects of the employer's decision to replace bargaining unit employees with those of a subcontractor.² Numerous public sector jurisdictions have adopted similar rulings through public sector labor relations adjudications.³ Additionally, certain states have recently enacted legislation enabling public school employers and exclusive representatives to negotiate the issue of subcontracting non-instructional employee positions.⁴

Relatedly, certain states have enacted reforms to establish standards, processes, and procedures that must be met where a public employer attempts to subcontract out

¹ *Arbah Hotel Corp.*, 371 NLRB No. 126, slip op. at 4 (2022) (citing *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 215 (1964)).

² *Id.*

³ See, e.g., *Oakland Unified School Dist.* (2005) California PERB Decision No. 1770; *Service Employees Local 316 v. Ill. Educ. Labor Relations Bd.*, 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418, 125 LRRM 2274 (App. 4th Dist. 1987); *Millcreek Twp. Sch. Dist. v. Millcreek Twp. Educ. Support Pers. Ass'n*, 653 Pa. 409, 439 (2019) (citing *Pa. Labor Relations Bd. v. Mars Area Sch. Dist.*, 480 Pa. 295 (1978)); *Community College District 17 (Spokane)* Washington PERC Decision 9379 at 2 n.1 (June 2006).

⁴ See N.J. Stat. Ann. §§ 34:13A-44 – 49; 2023 Mich. Pub. Act 143 (authorizing collective bargaining negotiations between schools and exclusive representatives for noninstructional support service contracts).



work performed by public employees, including public school employees.⁵ These reforms are designed to promote transparency and accountability in the subcontracting out process including requirements for cost projections for solicited services, reviewing bids in open session, inviting public comment on the proposals, and establishing protections for workers who may be impacted by the subcontracting decision.

Finally, it is important to note that Senate Bill 1043 seeks to establish comparable protections for public school employees that currently exist for public employees working in state government.

Current state policy, "is to use state employees to perform all state functions in state-operated facilities in preference to contracting with the private sector to perform those functions."⁶ At least sixty days before a state agency issues a solicitation for a service contract, the state agency must provide the exclusive representative of the employees who may be affected by the service contract with written notice of the work that is being proposed for contracting out, contracting procedures, requirements, timetables, and employees rights under relevant state law, and an opportunity to meet and discuss possible alternatives to the proposed service contract.⁷

Additionally, a state agency attempting to enter into a service contract must provide the Department of Budget and Management with certain information including a demonstration that the agency has explored alternatives to a service contract, cost comparisons that calculate the cost of providing the service with state employees versus the cost of the service contract, and a formal plan of assistance for all state employees who will be negatively impacted by the service contract.⁸ The plan of assistance must include i) efforts to place impacted employees in other vacant state

⁵ See *generally*, Cal. Educ. Code § 45103.1; 105 ILCS 5/10-22.34c; 24 P.S. § 5-528; Or. Rev. Stat. §§ 279B.030, 279B.033.

⁶ MD Code, State Personnel and Pensions, § 13-402.

⁷ MD Code, State Finance and Procurement, § 13-218.1(b)(1).

⁸ MD Code, State Personnel and Pensions, § 13-405.



agency positions; ii) requiring the contractor to hire displaced employees, if feasible; and iii) prior notification to the impacted employees.⁹

Furthermore, the Secretary of Budget and Management exercises oversight of contractual employees in the state service by ensuring that the use of contractual employees by state agencies are for services that cannot be performed by assignment or hiring of non-temporary employees, that comparable rates of pay exist between contractual employees and employees in positions that encompass comparable duties, responsibilities, experience, and authority, and the services performed under the contract are infrequent, of limited duration, or require quick implementation and no reasonable alternatives exist.¹⁰

In sum, Senate Bill 1043 promotes the public interest by creating more transparency and accountability from public school employers where they attempt to subcontract out work or services performed by public school employees. The protections for public school employees sought after in this bill resemble comparable protections for state employees, and the process outlining the obligation to negotiate this subject is similar to requirements in the private sector and other public sector jurisdictions. Public school employees, students and families, and communities stand to benefit with the processes established under this legislation.

We urge the committee to issue a Favorable Report on Senate Bill 1043.

⁹ MD Code, State Personnel and Pensions, § 13-405(d).

¹⁰ MD Code, State Personnel and Pensions, § 13-202(a).



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Cresta Kowalski
UniServ Director

The Allegany County Education Association (ACEA) supports Senate Bill 1043. Senate Bill 1043 establishes essential guardrails when public school employers attempt to subcontract out work or services performed by public school employees. The protections and standards established under the bill will apply to both certificated and non-certificated public school employees. The legislation ensures that public school employees, families, and communities, all have a say and opportunity to voice their opinion on this important issue before a public school employer may subcontract out work or services performed by public school employees.

ACEA represents over 864 educators and school employees who work in Allegany County Public Schools, teaching and preparing our students so they can pursue their dreams. ACEA is a local union affiliated with the Maryland State Education Association and the National Education Association at the state and national level, respectively.

We recognize that schools across the state of Maryland are struggling to find workers for some positions, but to subcontract those positions to private contractors does not provide a permanent solution. It is a temporary fix and the services that are provided are not able to be guarded by the school system to ensure they are of quality and up to the standards we expect for our students. Furthermore, subcontracting does not ensure that we are getting cost savings on services; instead, it leaves the school system at the mercy of the external company's need to raise costs on the backs of the taxpayers.



It is the responsibility of the state legislature to create a process for our school districts to use negotiations and fair collective bargaining before making decisions that impact our students and staff. We strongly urge the committee to issue a Favorable Report on Senate Bill 1043.

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Cindy Porter
President

The Carroll Association of School Employees (CASE) supports Senate Bill 1043. Senate Bill 1043 establishes essential guardrails when public school employers attempt to subcontract out work or services performed by public school employees. The protections and standards established under the bill will apply to both certificated and non-certificated public school employees. The legislation ensures that public school employees, families, and communities, all have a say and opportunity to voice their opinion on this important issue before a public school employer may subcontract out work or services performed by public school employees.

CASE represents over 900 support professionals who work in Carroll County Public Schools, working closely with students to help them become college and career ready. CASE is a local union affiliated with the Maryland State Education Association and the National Education Association at the state and national level, respectively.

According to a 2022 National Education Association member survey, 67 percent of education support professionals live in the communities in which they work, and many of them volunteer in those communities. Being a part of the communities in which they work strengthens the relationships that these employees develop with the students they serve. These relationships are an important part of helping students succeed in school and beyond.

When returning to school buildings after the Covid 19 pandemic, Carroll County Education Support Professionals experienced the inclusion of temporary private



company employees being utilized as assistants and paraprofessionals. These temporary employees didn't have the connections to the communities or our students that Carroll County Public Schools staff have at a time when our students very much needed connection. Being a private company employee provides no incentive to form those relationships that are so crucial to our students and their success. Employing people who have a stake in their communities is a benefit to our school systems and students in the state of Maryland and should be a vital consideration when deciding the disposition of this legislation.

We strongly urge the committee to issue a Favorable Report on Senate Bill 1043.



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**Jeannette Young
President**

The Education Support Professionals of Baltimore County (ESPBC) supports Senate Bill 1043. Senate Bill 1043 establishes essential guardrails when public school employers attempt to subcontract out work or services performed by public school employees. The protections and standards established under the bill will apply to both certificated and non-certificated public school employees. The legislation ensures that public school employees, families, and communities, all have a say and opportunity to voice their opinion on this important issue before a public school employer may subcontract out work or services performed by public school employees.

ESPBC represents over 2,200 education support professionals who work in Baltimore County Public Schools. ESPBC works to advance and protect the rights, benefits, and interests of members and promote a quality system of public education for all students. ESPBC is a local union affiliated with the Maryland State Education Association and the National Education Association at the state and national level, respectively.

In my capacity as President of ESPBC, what I have observed is that increasing numbers of contracted out school employees has several intended and unintended consequences. My observations, borne out by what my members tell me, is that these contracted out school workers do not have the same level of commitment to BCPS and our students. Turnover rates are higher, which increases costs to BCPS, and often my members have to train these workers because the contractor will not or cannot.



Simultaneously, we are often told by BCPS that due to budget constraints they cannot add permanent positions doing similar work into our bargaining unit, where they would receive union scale wages, benefits, important rights on the job, health insurance and more. Subcontracted positions performing similar work as our unit members keep wages down, increase turnover, result in poorer services to students, and increase the workload of our members.

We strongly urge the committee to issue a Favorable Report on Senate Bill 1043.



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**Missy Dirks
President**

The Frederick County Teachers Association (FCTA) supports Senate Bill 1043. Senate Bill 1043 establishes essential guardrails when public school employers attempt to subcontract out work or services performed by public school employees. The protections and standards established under the bill will apply to both certificated and non-certificated public school employees. The legislation ensures that public school employees, families, and communities, all have a say and opportunity to voice their opinion on this important issue before a public school employer may subcontract out work or services performed by public school employees.

FCTA represents over 3,300 educators who work in Frederick County Public Schools, teaching and preparing our students so they can pursue their dreams. FCTA is a local union affiliated with the Maryland State Education Association and the National Education Association at the state and national level, respectively.

For years, Frederick County Public Schools has contracted Speech Language Pathologist (SLP) services to fill open positions that were going unfilled. The amount in the budget was increasing year over year and costing the system hundreds of thousands of dollars to pay for dozen or more contracted SLPs and still having vacant positions. The result was a revolving door of SLPs – the contracted providers often left during the school year or did not return the following year. Leaving students and family constantly having to forge new relationships and the service providers not knowing any of the specific needs of students to start the year. The issues became even worse since the start of the pandemic because many of the contracted SLPs would only work remotely even when all the SLPs employed directly by FCPS were



working in person. This created a burden on the staff at those schools particularly elementary schools where the students still needed supervision by an adult in-person while they were getting the virtual services of the SLP. The SLP was also unable to fulfill their share of all other onsite duties and responsibilities of educators. FCTA fielded many concerns from other SLPs and school staff dealing with the ramifications of the contracted SLPs being granted different working conditions than the regularly employed SLPs.

FCTA has repeatedly asked the schools system to work with us to help reduce the number of contracted services and for many years was ignored. But then the tide shifted and FCPS started to work collaboratively on this issue. In 2017 a joint workgroup was convened that made recommendations to the negotiating teams regarding SLPs needs under their licensure process which differs from the teacher certification process namely reimbursing license fees, bundling SLP CEU credits into MSDE credits so they can be applied to the PayScale for lane advancement. While this started to recognize the needs of the employees and staved off some attrition of current SLPs more was needed. We jointly agreed in negotiations to add tuition reimbursement for the CEU courses that SLPs need to maintain licensure in the same manner that college coursework is reimbursed for other educators.

But the largest impact was made as the result of another joint workgroup that looked at and recommended moving all SLPs to a flexible 11 month contract to recognize all the work outside the contractual day SLPs needed to put in because they do not get substitutes and are required to make up 100% of all service hours missed regardless of the reason. In addition to the paperwork for IEPs and medical billing. July 1, 2022 regularly employed SLPs were moved to that flexible 11 month work years. At the February 14, 2024 Board of Education meeting the Special Education Department reported to the BoE that we had 3.5 contractors in our Elementary Middle and High positions with only 2 other vacancies and 3 contractors in our other programing.

That is a significant increase in regularly employed SLPs recruitment and retention because the school system and FCTA collaboratively worked together to identify and address root causes of the need for the large numbers of SLP subcontractors. This is a success story that could be replicated if this law were passed.



We strongly urge the committee to issue a Favorable Report on Senate Bill 1043.