

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1027
Ways and Means

(Delegate Fisher, *et al.*)

Education - Primary and Secondary Schools - Alternative School Options (Right to Learn Act)

This bill partially codifies the Broadening Options and Opportunities for Students Today Program (BOOST), administered by the Maryland State Department of Education (MSDE), and establishes Right to Learn scholarships within BOOST to pay for students in “failing schools” to attend an alternative school, including a nonpublic school. The purpose of the BOOST Program is to provide (1) scholarships for students who are eligible for the U.S. Department of Agriculture’s free and reduced-price lunch program to attend an eligible nonpublic school and (2) Right to Learn scholarships for students who attend a failing school and choose to attend a nonpublic school. If a student, as deemed by the school administrator, is violent or receives continuous disciplinary action, the student may elect to attend a military boarding school, with costs covered by the local school system. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: The Right to Learn scholarships cannot be implemented as drafted, but based on the perceived intent of the bill and using the assumptions discussed below, beginning in FY 2027, general and special fund expenditures likely decrease by an indeterminate amount due to decreased enrollments in public schools. The net reduction in State costs could be in the millions of dollars but cannot be reliably estimated as the number of affected students is not known. General fund expenditures may increase minimally for staffing and related administrative costs. No effect on revenues.

Local Effect: Based on one interpretation of the bill, county government appropriations to public schools decrease, beginning in FY 2027 due to decreased enrollments in public schools, but a reliable estimate is not feasible, in part because the Right to Learn scholarships cannot be implemented as drafted. Beginning in fiscal 2027, local school

system revenues from the State and from county governments decrease and expenditures increase, possibly by millions of dollars statewide, but a reliable estimate of these effects is not feasible. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A “failing school” means a school that has, for at least the three prior consecutive school years, received one star under the State accountability system adopted by the State board, as required by the federal Every Student Succeeds Act (ESSA). A school continues to be designated as a failing school until the school receives at least a two-star rating for two consecutive school years. By January 1 each year, each local board of education must provide to the parent of each student who attends a failing school notification that the school is failing and a list of alternative school options. Alternative school options include (1) a public school in the same county that is not a failing school; (2) a nonpublic school; or (3) a boarding school, including a military boarding school. A student attending a failing school must be provided the opportunity to attend an alternative school. By April 1, the parent must notify the local board of the student’s decision to continue attending the school or attend a particular alternative school.

A family may use a Right to Learn scholarship to provide a student attending a failing school the opportunity to pursue any of the alternative school options. For each student who receives a Right to Learn scholarship, the local board of education must remit funds to MSDE equal to the local school board’s per-pupil expenditures for specified State aid programs, to cover the costs of the scholarship. MSDE must return any unused funds to the local board.

MSDE must adopt regulations for Right to Learn provisions of the bill.

Current Law:

Broadening Options and Opportunities for Students Today Program

BOOST has been authorized annually since fiscal 2017 through the budget bill and budget bill language. Special funds for this program are provided through the Cigarette Restitution Fund (CRF), but annual funding is not mandated. According to the annual authorizing language, scholarship amounts and distribution of scholarships are determined by the BOOST Advisory Board, while the program is administered by MSDE.

The fiscal 2024 operating budget, as enacted, details the criteria for nonpublic schools that have students who are eligible for a BOOST scholarship and would like to participate in BOOST. These criteria include:

- participation in the Aid to Non-Public Schools Program for textbooks and computer hardware and software in the prior school year;
- providing more grades than only prekindergarten and kindergarten;
- administering standardized assessments used to qualify nonpublic schools for the National Blue Ribbon Schools program in English, mathematics, and science at specified grade levels; and
- compliance with Title VI of the Civil Rights Act of 1964 as amended; Title 20, Subtitle 6 of the State Government Article (related to employment nondiscrimination) and not discriminate in student admissions, retention, or expulsion, or otherwise discriminate against any student based on race, color, national origin, sexual orientation, or gender identity or expression.

The fiscal 2024 operating budget also specifies that the BOOST Advisory Board must prioritize awards for current BOOST recipients and their siblings and that a student must receive no less than the fiscal 2022 base award amount. For students who receive a BOOST scholarship for the first time, priority must be given to students who attended public schools in the prior school year. In addition to the \$9.0 million in fiscal 2024 State funding for BOOST, \$2.5 million is provided for school nurses, other health services, and for school security at schools that participated in BOOST.

The fiscal 2025 budget (Senate Bill 360/House Bill 350) as introduced includes \$9.0 million in CRF monies, level with the fiscal 2024 appropriation, for BOOST. The nonpublic school eligibility criteria are similar to those described above for fiscal 2024. The only substantive difference is that, though the proposed language requires that assessments comply with all State and federal law, the language does not refer to the National Blue Ribbon Schools program. The proposed budget language limits BOOST award eligibility in fiscal 2025 to those who (1) have a sibling who received a BOOST scholarship award in the 2023-2024 school year or (2) received a BOOST scholarship award for the 2023-2024 school year and will be entering any of grades 1 through 12; those entering grade 9 must have attended a nonpublic school that serves kindergarten through grade 12.

Maryland School Accountability System

In 2017, as required by ESSA, the reauthorization of the federal Elementary and Secondary Education Act, and the parameters set by the Protect Our Schools Act of 2017 (Chapter 29), the State board developed a Maryland school accountability system. Public schools are

rated on a variety of weighted measures and then awarded between one and five stars based on their scores. This system was first implemented during the 2017-2018 school year. However, it was suspended for school years 2020-2021 and 2021-2022 due to the COVID-19 pandemic.

Blueprint for Maryland's Future and Education Funding Formulas

Blueprint for Maryland's Future (Blueprint) legislation, including Chapter 771 of 2019; Chapters 36 and 55 of 2021; and Chapter 33 of 2022 established new programs and updated education funding formulas, to among other provisions provide additional support for schools serving high concentrations of students living in poverty, including community schools and wraparound services, and increased support for students learning English and students with disabilities.

The great majority of direct State aid to public schools (excluding teachers' retirement) is determined by enrollment-based funding formulas generally found in Title 5, Subtitle 2 of the Education Article. Collectively, the formulas account for a uniform base cost per pupil that is necessary to provide general education services to students in every school system and address the additional costs associated with educating three student populations: special education students; students eligible for free and reduced-price meals; and students who are English-language learners. Chapter 36 established additional major education aid programs.

Most State education aid formulas also include wealth equalization across counties, compensating for differences in local wealth by providing less aid per pupil to the more wealthy counties and more aid per pupil to the less wealthy counties. Although on the whole most State aid formulas are designed to have the State pay roughly one-half of program costs, 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%.

Maintenance of Effort and Local Share

Each year, the county government (including Baltimore City) is required to appropriate funds to the local board of education equivalent to the greater of the maintenance of effort (MOE) requirement or the local share amount of all wealth-equalized formulas. The per-pupil MOE amount is based upon the greater of (1) the prior year full-time equivalent (FTE) enrollment and (2) the three-year moving average of FTE enrollment. (There is a certain adjustment for fiscal 2024 MOE for specified counties.) The local share amount equals the local share of the foundation formula, compensatory education, English language learner, special education, comparable wage index (CWI), full-day prekindergarten, college and career ready, transitional supplemental instruction (through fiscal 2026), and career ladder grant programs. Also, counties that benefit from the

compensatory education State funding floor are required to fund the local share of the concentration of poverty grant programs. However, for some counties, the combined local share across these several programs is subject to adjustments described below.

Education Effort Adjustment to Local Share Requirement

Local governments are required to fund the local share of the foundation program and the required local shares for several existing and new funding formula programs. The law also includes a mechanism for establishing a maximum local share that a county must fund each year. This involves “local education effort,” which is determined for each county by dividing the county’s local share of major education aid by the county’s wealth. An “education effort index,” which is the local education effort divided by the “State average education effort” is then determined. A “maximum local share” is calculated for each county, which is the county’s local wealth multiplied by the State average education effort.

Each county with an education effort above 1.0 for two consecutive years receives relief based upon its “education effort adjustment,” which is the amount by which the calculated local share exceeds the maximum local share. This relief (which results in increases to State aid) is provided to counties within one of three tiers, based on whether the education effort is (1) greater than 1.0 but less than 1.15; (2) at least 1.15 but less than 1.27; or (3) at least 1.27. State relief for the first tier is phased up from 15% of the education effort adjustment in fiscal 2023 to 50% by fiscal 2030. State relief for the second tier is phased up from 20% of the education effort adjustment in fiscal 2023 to 100% by fiscal 2030. State relief for the third tier is 100% beginning in fiscal 2023. However, the education effort adjustment for a county is only allowed to the degree that per-pupil MOE is met each year.

Additional Reductions to Local Share

A county may be eligible for a reduction in the required local share of major aid formulas in three additional ways: (1) if a county receives State funds from the Guaranteed Tax Base (GTB) program, the local share may be reduced by the amount of GTB funds, except that for Baltimore City only the amount above \$10 million may be reduced from the local share; (2) if a county receives State funds to support the minimum funding floors of 15% for the foundation and 40% for the targeted programs; and (3) if a county has a CWI of at least 0.13, the local share of CWI may be reduced by 50%. However, in all of these cases, the local share may not be reduced below the required per-pupil MOE amount.

Suspension and Expulsion in Public Schools

In accordance with rules developed by each local school board, a principal may suspend a student for cause for up to 10 school days. The principal must provide the suspended

student and the student's parents with a conference during the suspension period and a list of community resources. Upon request by a principal, a local superintendent may suspend a student for more than 10 days or expel a student, subject to investigation, conferencing, and appeal procedures in statute. A student may not be suspended or expelled only for attendance-related offenses but may be subject to in-school suspension for those offenses.

A student who has been suspended or expelled may not return to the classroom until the principal confers with (1) the teacher(s) who referred the student (if appropriate); (2) other appropriate school personnel; (3) the student; and (4) the student's parent or guardian.

If disruptive behavior results in action less than suspension, the principal or designee must confer with the teacher who referred the student prior to the student returning to the teacher's classroom.

Discipline Guidelines

The State Board of Education (SBE) must establish guidelines that define a State code of discipline for all public schools with standards of conduct and consequences for violations of the standards. The guidelines were last updated in 2014. In December 2018, the board established a Task Force on Student Discipline Regulations to review the guidelines and regulations. The task force issued its final report in August 2019, but no changes to the regulations or guidelines were made as a result.

The State board must also (1) upon request, provide technical assistance and training to local school boards on the use of restorative practices and (2) assist each local school board with implementing the guidelines. Each local school board must adopt regulations designed to create and maintain within schools the atmosphere of order and discipline necessary for effective learning. The local regulations must state that the primary purpose of any disciplinary measure is rehabilitative, restorative, and educational. They must also provide for educational and behavioral interventions, restorative approaches, counseling, student and parent conferencing, and alternative programs.

Reportable Offenses

When a student is arrested for a "reportable offense" or an offense related to the student's membership in a criminal organization, the law enforcement agency making the arrest must notify (1) the local superintendent; (2) the school principal; and (3) if appropriate, the school security officer. The law enforcement agency may also notify the State's Attorney (the bill requires notification of the State's Attorney).

A reportable offense is an offense that (1) occurred off school premises; (2) did not occur at an event sponsored by the school; and (3) includes a crime of violence, as specified in current law, and numerous other specified weapons-, drug-, assault-, and theft-related offenses. If a student is removed or excluded from the student's regular school for a reportable offense, the student's attorney (if applicable) must be invited to participate in a conference between the student or the student's parent or guardian and the principal or county superintendent.

Except by order of a juvenile court with good cause shown, information about a student's arrest is confidential and may not be redisclosed, except as specified, and may not be part of the student's permanent educational record. A superintendent may share the information as part of a confidential file with another superintendent or a nonpublic school in the State in which the student has enrolled. The information shared must include information regarding any educational programming and related services provided to the student. SBE is required to adopt regulations to ensure that information obtained by local superintendents, principals, or school security officers is used only for specified educational purposes and is destroyed when the student graduates, otherwise permanently leaves school, or turns 22 years old, whichever comes first.

State Fiscal Effect:

Local public school year calendars for school attendance tend to commence in late August or early September and to end in June of the following calendar year. Given the bill's July 1, 2024 effective date, and given the annual January 1 and April 1 notification dates under the bill, the bill is assumed to impact public school enrollment beginning in fall 2025. Fall 2025 enrollment counts influence State aid in fiscal 2027. Though provisions related to students deemed to be violent or to have received continuous disciplinary action having the option to attend military boarding school do not specify a timeline for notifications, it is assumed to be similar to the timeline for Right to Learn scholarships. Thus, State impacts under the bill are assumed to begin in fiscal 2027.

State Education Aid and Right to Learn Scholarships

The Right to Learn Scholarships cannot be implemented as drafted. The bill requires local school systems to send to MSDE the total per-pupil aid (State and county) that they receive for each student in a failing school who elects to attend a nonpublic school under the bill. MSDE must then use the aid payments they receive to pay the Right to Learn Scholarships for those students. However, students who enroll in nonpublic schools are not included in public school enrollment counts, so local school systems do not receive per-pupil aid for those students. In short, local school systems cannot remit the aid to MSDE for those students because they never receive the aid.

Under a strict interpretation of the bill, State aid – paid with general and special funds (Blueprint for Maryland’s Future Fund) – decreases for each student enrolled in a failing school who enrolls in a nonpublic school because those students are not included in annual public school enrollment counts used to calculate State aid. However, MSDE cannot award any Right to Learn scholarships because it does not receive the per-pupil allocations with which to pay the scholarships. Thus, under this strict interpretation, it is unlikely that any students from failing schools enroll in nonpublic schools since their costs are not covered, and the bill has no effect.

Based on the perceived intent of the bill, an alternative interpretation is that (1) the State appropriates State aid for each student from a failing school who enrolls in a nonpublic school; (2) MSDE retains the per-pupil aid for each such student and receives corresponding payments from county governments; (3) MSDE uses those funds to pay Right to Learn scholarships for each student from a failing school who is enrolled in a nonpublic school; and (4) any unused portion is sent to the local school system where the student was previously enrolled. The Department of Legislative Services (DLS) notes that statute governing the calculation and payment of State aid would need to be substantially amended to allow for this interpretation, which the bill does not do.

Under this alternative interpretation, State per-pupil aid allocations for each student from a failing school who is enrolled in nonpublic school are used either for the Right to Learn scholarships or, if unused, returned to the local school system, resulting in no change to the per-student allocation paid by the State.

Payments for Students in Military Boarding Schools

Total general and special fund (Blueprint for Maryland’s Future Fund) expenditures are likely reduced by an indeterminate amount beginning in fiscal 2027, based on reduced enrollment in public schools by students electing to attend a military boarding school. The bill does not require State aid to be used to pay for the costs associated with these students attending military boarding schools, as is the case with the Right to Learn scholarships. Instead, the students attending military boarding schools are no longer included in the annual enrollment counts in fall 2025, thereby reducing State aid (and local county) payments to local school systems beginning in fiscal 2027. It is not known how many students (1) will be identified as violent or receive continuous disciplinary action or (2) how many of those students will elect to attend a military academy, so a reliable estimate of the reduction in State aid payments is not feasible but is likely in the millions of dollars.

Broadening Options and Opportunities for Students Today

Though neither current law nor the bill require a specified annual appropriation for BOOST, leaving room for the possibility that Right to Learn scholarship funding under the bill offsets funding for traditional BOOST scholarships, this analysis assumes that BOOST scholarships continue in approximately the same form as in recent years and are funded at \$9.0 million annually in CRF funds. Thus, codifying the traditional BOOST scholarships does not substantially alter public school enrollment or funding. DLS notes that, since BOOST is not codified in statute and the bill does not specify funding levels or allowable uses for BOOST scholarships, funding levels and scholarship uses may vary substantially from these assumptions.

Maryland State Department of Education Administrative Costs

Current BOOST staffing includes one full-time program manager and a 0.5 administrative staff position, whose work results in approximately 3,000 BOOST scholarships annually. This level of scholarships is roughly equivalent to half of all students eligible for alternative school placements choosing an alternative school placement in a nonpublic school. Given the other options of remaining in the failing school or choosing an alternative public school, and given the possibility that one or more of the 14 identified schools (discussed further below) will receive a star rating above 1 in 2024, it is assumed that MSDE will require at most one additional position to administer Right to Learn scholarships under the augmented BOOST program. MSDE anticipates that its contract with its online vendor for online BOOST scholarship applications will increase by approximately \$190,000 annually. DLS assumes there are far less costly means for local boards of education to notify MSDE of students who will attend alternative nonpublic schools, and thus receive Right to Learn funding.

Local Fiscal Effect:

County Governments

County governments are responsible for providing at least the greater of (1) the local share of major aid programs, after accounting for local share relief and (2) the per-pupil MOE. Both local share and MOE are driven by school enrollment counts. As with State education aid, under a strict interpretation of the bill, county payments decrease for each student from a failing school who enrolls in a nonpublic school because they are no longer included in the public school enrollment counts. However, if the county does not provide aid payments to local school systems for those students, no funds are available to pay the Right to Learn scholarships and the bill has no effect.

Under the alternate interpretation described above, county aid payments are sent to MSDE and used to pay Right to Learn scholarships for students from failing schools who enroll in nonpublic schools. DLS notes that this interpretation is based on the bill's perceived intent, but current law does not allow such payments.

Under this alternate interpretation, there is no effect on county government per-pupil aid payments because any unused funds for the scholarships revert to the school system. Thus, county payments for students receiving Right to Learn scholarships are either used for the scholarships or they revert to the local school system.

To the extent that public school students are diverted to military boarding schools public school enrollment counts are reduced. Thus, beginning in fiscal 2027 local appropriations to public schools are reduced to the extent that these alternative options are available and exercised. Fiscal 2024 local appropriations averaged \$9,300, ranging from about \$3,500 in Wicomico County to about \$12,800 in Howard and Montgomery counties, and amounted to about \$5,600 in Baltimore City.

Assuming State CRF funding for BOOST is maintained at current levels, BOOST's continuation has no effect on enrollment counts or county funding for public schools.

Local Education Agencies

Under the strict interpretation of the bill described above, the Right to Learn scholarships have no effect on local education system revenues and expenditures because scholarships are not paid and eligible students do not enroll in nonpublic schools.

Under the alternative interpretation and for reasons discussed above, local school system revenues decrease, potentially significantly, beginning in fiscal 2027. For each student receiving a Right to Learn scholarship, some or all State and county funding linked to that student is used instead to pay for the scholarship. As the bill does not specify (1) the amount of Right to Learn scholarships; (2) allowable costs for the scholarships; or (3) whether the scholarships are required to cover all allowable costs of attending an alternative school or only a portion of those costs, DLS cannot determine what proportion of State and county education aid is diverted for the scholarships. Although some unused portion may revert to the local school system, the amount of any reversion cannot be reliably estimated. Nevertheless, the net effect on local school systems is a potentially significant reduction in revenues for public schools.

DLS is aware of 14 schools that received one-star ratings in the past two years for which data is available (school years 2022-2023 and 2023-2024). As noted above, data is not available for school years 2020-2021 or 2021-2022 due to COVID-19. Therefore, no schools currently qualify as failing schools under the bill because no schools have received

one-star ratings for three consecutive years. Of the 14 schools identified, 9 are in Baltimore City, 2 are in Baltimore County, 1 is in Dorchester County, and 2 are evening high schools in Anne Arundel and Wicomico Counties, respectively, with a total enrollment of approximately 6,500 students. To the extent that some or all of those 14 schools receive a one-star rating during the 2024-2025 school year, students in those schools become eligible for Right to Learn scholarships. If none of the schools receive a one-star rating, the bill has no effect in fiscal 2027.

Because much of the reduction in school system revenues is driven by students in school systems with failing schools, as defined by the bill, reductions in revenues for local school systems amount to about \$14,100 per student (absent reversions of unused funds). With the potential for as many as 6,500 students eligible for Right to Learn scholarships, local school system revenues may decrease by as much as \$91.6 million.

Enrollment, and thus related revenues from State aid and county education funding, is further reduced for each public school student that attends a military boarding school, which can include schools in other states. In addition, local school system expenditures likely increase to cover tuition and other costs associated with students attending military boarding schools.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City Public Schools; Maryland State Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2024
js/mcr

Analysis by: Scott P. Gates

Direct Inquiries to:

(410) 946-5510

(301) 970-5510