

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1161  
Ways and Means

(Delegate A. Washington, *et al.*)

Education, Health, and Environmental Affairs

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Commission on Special Education Access and Equity

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This bill establishes a Commission on Special Education Access and Equity and specifies what the commission must study. The Maryland State Department of Education (MSDE) must provide staff for the commission. The commission must report its findings and recommendations to the Governor; the Senate Education, Health, and Environmental Affairs Committee; and the House Ways and Means Committee by June 30, 2014.

The bill takes effect June 1, 2013, and terminates June 30, 2014.

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Fiscal Summary

**State Effect:** Any expense reimbursements for commission members are assumed to be minimal and absorbable within existing resources. MSDE can staff the commission with existing resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The commission must study the extent to which parents and guardians of students with disabilities are made aware of their rights under the Individuals with Disabilities Education Act (IDEA) and State law and regulations relating to children with disabilities and potential ways to improve the awareness of these rights.

The commission must also study disparities and potential methods for eliminating any disparities based on race, national origin, and limited English proficiency (LEP) in the following areas:

- knowledge of and access to special education services;
- rights under IDEA;
- access to and participation in Individualized Education Program (IEP) mediation and appeals; and
- access to and participation in free and reduced-price meals.

Also, the commission must study the effects of workload, caseload, and paperwork requirements related to the special education process on the ability of educators to provide a free and appropriate public education, and potential methods for mitigating these factors. Further, the commission must study concerns about equity between the parties in special education due process hearings and potential methods for improving the process, the State and local costs of all proposals considered or recommended by the commission, and any other issues related to access and equity in the provision of special education services.

**Current Law:** IDEA requires that a student with disabilities be provided a free appropriate public education in the least restrictive environment, in accordance with an IEP specific to the individual needs of the student. An IEP is a written statement for each child with a disability, that among other things must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

School personnel must provide the parents of a child with a disability with accessible copies of all documents relating to the development of an IEP at least five business days before a scheduled meeting, unless the parents have given notice that they do not want to receive certain documents. Documents prepared for the meeting by a school psychologist or other medical professional may be provided to the parents orally and in writing prior to the meeting. In the event of an extenuating circumstance, appropriate school personnel who fail to provide parents with required information prior to the meeting must document the extenuating circumstance and communicate the information to the parents. Not later than five business days after a scheduled meeting, appropriate school personnel must provide the parents of the child with a copy of the completed IEP or, if it has not been completed, a draft copy of the IEP. The completed or draft IEP must be provided to the parents in an accessible format.

Chapter 233 of 2006 (SB 107) established a 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. The request for mediation may not be used to deny or delay the parent's right under the law. Any party to the mediation has the right to be accompanied and advised by counsel.

A parent of a child with disabilities may file a due process complaint with the Office of Administrative Hearings (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. Parents have a right to have the child subject to the hearing present at the hearing and to open the hearing to the public. Any party to the hearing has a right to:

- be accompanied and advised by counsel and individuals with special knowledge or training with respect to the problems of children with disabilities;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- prohibit the introduction of any evidence at the hearing which has not been disclosed to all parties at least five days before the hearing;
- obtain a written or electronic verbatim record of the hearing; and
- obtain written findings of fact and decisions.

### *Limited English Proficiency*

Several federal laws and directives mandate language assistance to LEP individuals. These laws and directives include Title VI of the Civil Rights Act of 1964, the Voting Rights Act, and Executive Order 13166 signed in 2000. Collectively, these laws and directives attempt to provide meaningful language access to voting and government services and combat unlawful discrimination on the basis of national origin. National origin discrimination includes discrimination on the basis of LEP. State law requires State agencies to take reasonable steps in providing equal access to public services for LEP individuals. Reasonable steps include the provision of oral language services for individuals who cannot adequately understand or express themselves in spoken or written

English and the translation of vital documents ordinarily provided to the public into any language spoken by any LEP population that constitutes 3% of the overall State population within the geographic area served by a local office of a State program as measured by the U.S. Census.

**Background:** Parent centers, comprised of Parent Training and Information Centers and Community Parent Resource Centers, provide training and assistance to the families of children with disabilities. Regional parent technical assistance centers provide technical assistance to parent centers, including training and information on relevant laws and regulations, under-served and/or under-represented populations, and alternative dispute resolution. The Center for Appropriate Dispute Resolution in Special Education (CADRE) aims to increase the nation's capacity to effectively resolve special education disputes, thereby reducing the use of expensive adversarial processes. CADRE works with state and local education and early intervention systems, parent centers, families and educators to improve programs and results for children with disabilities.

As required by IDEA, the State has developed a State Performance Plan (SPP) and must submit an Annual Performance Report (APR) for a certain period of years. One of the 20 indicators in the SPP is described as the "percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities." According to survey results reported in MSDE's federal fiscal 2010 APR, Maryland exceeded its target of 34% for parents of school-age children (by realizing a result of 40%) and its target of 38% for parents of preschool age children (by realizing a result of 49%). In both cases, this represents an improvement over federal fiscal 2009 results for this indicator.

The 2004 reauthorization of IDEA included provisions aimed at reducing paperwork, but a June 2012 U.S. Government Accountability Office report indicates that many local school systems continue to report that various aspects of IDEA, including those related to IEPs are both time-intensive and paperwork-intensive.

### *State Aid for Special Education*

The State's special education formula provides aid based on the number of students with disabilities in each local 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. In fiscal 2010, the State share of funding for nonpublic placements was reduced from 80% to 70% of the costs exceeding the base local contribution (*i.e.*, local share plus 200% of the basic cost). Since that time, the number of students served by the program has decreased by 345 and the average

placement cost has also declined. The proposed fiscal 2014 State budget includes \$389.3 million in State funds for special education (including \$109.8 million for nonpublic placements) and \$191.0 million in federal funds.

#### *State and Local School Food and Nutrition Programs*

Local school systems are subject to federal law and regulations through participation in federal food and nutrition programs. MSDE monitors local school compliance with federal law regarding school food and nutrition programs and provides training and technical assistance to local school systems. The Maryland Code of Regulations indicates that local school systems are subject to administrative review by MSDE and/or the U.S. Department of Agriculture for the purpose of evaluating the administration of a food and nutrition program. The State provides funding to support food and nutrition programs for low-income children, including free and reduced-price breakfasts, lunches, and snacks. The proposed fiscal 2014 State budget includes \$9.5 million for these food service programs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, U.S. Department of Education, U.S. Government Accountability Office, Department of Legislative Services

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