

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1142 (Senator Bates, *et al.*)
Education, Health, and Environmental Affairs

State Department of Education - McArdle Early Intervention Scholarship Program

This bill establishes the McArdle Early Intervention Scholarship Program to provide early intervention services for, and to improve the educational outcomes of, young students with disabilities by authorizing the parent or guardian to (1) send the student with disabilities to a public school other than the public school to which the student is assigned (including a school in another local school system) or (2) use a scholarship awarded under the program to allow a student with disabilities to attend a private school for students with disabilities or with a specialized program for students with disabilities. The cost of a scholarship must be paid by the State and by the county in which the eligible student is domiciled in accordance with existing law for the shared cost of the education of children with disabilities.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: The bill's requirements *may* put the State out of compliance with the federal Individuals with Disabilities Education Act (IDEA), thus potentially jeopardizing approximately \$203.4 million in federal IDEA Part B revenues authorized for FY 2017. General fund expenditures increase, potentially significantly, beginning in FY 2017 as a result of students entering a nonpublic placement school or other eligible private school due to the scholarship who might otherwise have been enrolled in a public school. The fiscal impact cannot be reliably estimated, but for every 10 students who enroll in an eligible private school, general fund expenditures increase by approximately \$242,000 (not shown below). It is assumed that students who enroll in another public school do not affect State aid formulas. General fund expenditures increase by an estimated \$124,600 for the Maryland State Department of Education (MSDE) to hire two full-time employees to

administer the program (shown below). **This bill establishes a mandated appropriation beginning in FY 2018.**

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
FF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$124,600	\$155,400	\$161,500	\$167,900	\$174,500
Net Effect	(\$124,600)	(\$155,400)	(\$161,500)	(\$167,900)	(\$174,500)

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

Local Effect: Local school system expenditures increase possibly by a significant amount beginning in FY 2017 due to students entering into a nonpublic placement school or other private school due to the scholarship instead of remaining in a public school. The amount cannot be reliably estimated and varies by school system, as shown in **Exhibit 2**. However, based on the average statewide cost, for every 10 students who enter into a nonpublic placement school or other eligible private school, local expenditures increase by \$240,000. It is assumed that students who enroll in another public school do not affect State aid formulas; however, local expenditures may be affected. Local school system expenditures increase to provide eligible students with transportation to their chosen public school within their school system. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal. Due to scholarships provided by the State under the bill, revenues at private schools for students with disabilities and private schools that have specialized programs for students with disabilities may increase.

Analysis

Bill Summary:

Eligibility for Program

A student is eligible for the program if at the time of initial application the student (1) is age 2 through 8; (2) has an approved individualized educational program (IEP); (3) has one of several specified document diagnoses; and (4) if the child is of school age, attended a public school in the State during the school year immediately preceding the school year for which the parent or guardian is applying for the program. A student who is homeschooled, or is enrolled in either the Maryland School for the Deaf, the Maryland School for the Blind, or in a school that provides educational services to youth in the Department of Juvenile Services, is not eligible.

Process to Apply for and Exit the Program and Transportation

The bill specifies the procedures for application for a transfer to another public school and for a scholarship. A student who is transferred to another school under the program may attend the chosen school until graduation from high school. A program scholarship terminates the sooner of (1) the reenrollment of an eligible student in a public school; (2) the student's graduation from high school; or (3) the student's twenty-second birthday.

Accepting and Enrolling Eligible Students

MSDE must verify a student's eligibility for the program and notify both the student's local school system and the local school system to which the student is transferring. A local school system may refuse to enroll a student who is eligible for transfer if the public school or program lacks sufficient space for the student. If a parent transfers a student to a public school in another school district, the parent must provide student transportation; if the transfer is within a school system, the local school system must provide student transportation.

MSDE must notify the relevant local school system of a parent's intention to transfer an eligible student to another school under the program. A student attending a private school under the program must regularly attend school unless excused for good cause, follow school policies, and if requested by the parent, take all statewide student assessments (the local school system must accommodate this request); the parent must ensure the student's attendance and compliance with school policy. Upon reasonable notice, a student may be transferred to another private school participating in the program or be reenrolled in a public school.

Private Schools Eligible to Participate

To be eligible to participate in the scholarship program, a private school must serve students with disabilities or have a specialized program for students with disabilities. A school must provide MSDE with specified documents at certain times, be accountable to the parent of a student for meeting the educational needs of the eligible student by taking specified actions, and maintain a physical location in the State for classes.

The State superintendent must deny, suspend, or revoke a private school's participation in the program if the private school fails to comply with eligibility requirements. However, if it is determined that the school's failure to comply is correctable within a reasonable amount of time and students' well-being is not threatened, the State superintendent may allow the private school to provide evidence of compliance within a specified timeframe, before suspending or revoking the private school's program participation. The State superintendent may immediately suspend payment of scholarship funds to a private school

if it is determined that there is probable cause to believe that there is an imminent threat to the well-being of the students or fraudulent activity on the part of the private school. The State superintendent may deny, suspend, or revoke a private school's participation in the program if the superintendent determines that the private school is or has been operated in a manner contrary to the health, safety, or welfare of the public. Before denying, suspending, or revoking a private school's program participation, the school must have an opportunity for a hearing before MSDE. A private school may petition for judicial review as allowed by the Administrative Procedure Act.

MSDE, to verify student enrollment and attendance, certain credentials and background information of teachers, and the well-being of students and personnel at a private school, may make up to three random site visits to participating private schools (not more than one to any single school) per year.

The bill may not be construed to authorize the State, MSDE, the State superintendent, or any local school system to impose additional regulations on participating private schools beyond those regulations necessary to carry out the requirements of the bill.

Program Information and Maryland State Department of Education Requirements

MSDE must establish a toll-free hotline providing information on participation in the program and provide specified notification about the program to parents of a student with an IEP. MSDE must also make specified efforts to assure compliance with program specifications and cross-check the list of scholarship awardees with public school enrollment lists to avoid duplication of scholarship payments.

Based upon per student costs and the number of eligible students, MSDE must make quarterly payments from the State general fund to a separate account for program scholarships. Upon receiving specified verification from MSDE, the Comptroller must make quarterly scholarship payments to the parents of scholarship awardees.

MSDE must adopt regulations to implement provisions of the bill and annually report to the Governor and the General Assembly on the implementation of the scholarship program, including information on program participation and costs.

Current Law:

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 age 21, in accordance with an Individualized Family Service Plan (IFSP)

or an IEP specific to the individual needs of the student. IFSP is for children with disabilities from birth to 2 and their families. An IEP is for children with disabilities from age 3 to 21.

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.

Before an IEP is written for a child with a disability, the school must first determine whether the child qualifies for special education services. To qualify, the child's disability must have an adverse effect on the child's educational progress.

To determine eligibility, the school must conduct a full evaluation of the child in all areas of suspected disability. Based in part on the results of the evaluation, the school along with the parents meet to review the results and the child's current level of performance and to determine whether special education services are needed.

If the child is found eligible for services, the school is required to convene an IEP team and develop an appropriate educational plan for the child. The IEP should be implemented as soon as possible after the child is determined eligible.

Nonpublic Placements and "Basic Cost"

Most students with disabilities receive special education services in the public schools. However, if an appropriate program is not available in the public schools, a student may be placed in a private school offering more specialized services. The costs for these students, who are placed in nonpublic day or residential facilities, are shared by the local school systems and the State. The school system contributes an amount equal to the local share of the basic cost of educating a child without disabilities plus two times the total basic cost. Any costs above this are split 70% State/30% local.

The "basic cost" as to each local school system means the average amount spent by the local school systems from local, State, and federal sources for the public education *minus* amounts specifically allocated and spent for identifiable compensatory programs for disadvantaged children.

Geographical Attendance Areas of Schools and Student Transportation

Each local board of education must determine the geographical attendance area for each of its public schools. Generally, a student must attend the school designated to serve the student's attendance area. However, local boards of education have various policies allowing for enrollment of or the transfer of a student outside of his or her attendance area, under certain circumstances. Unique hardship circumstances, childcare needs, programming purposes, and relief of school overcrowding are among the local exceptions to required pupil attendance within designated attendance areas.

Generally, local school systems must provide transportation to and from school for public school students. A county school board may establish a mileage limit within which school bus transportation is not generally provided. However, a student within an established mileage limit may use a school bus if the school bus is not filled to capacity, if no additional bus stop is added to the route to transport the student, and a specific hardship for the student is identified by the transportation officer.

If a county school board considers it practicable, it must consolidate schools and arrange for the transportation of students to and from consolidated schools.

Under certain conditions, a county may send children who reside within its borders to a public school in an adjoining "receiving county." A public school that is near the boundary of two counties may thereby be jointly attended by students from both counties. The county school boards of the two counties may provide jointly for the maintenance and support of the jointly attended school and determine the geographical attendance areas and other attendance policies for all jointly attended schools in the receiving county. If the two counties fail to agree on a geographical attendance area, then the State superintendent must decide the matter.

State Education Aid

The foundation program is the major State aid program for public schools. A formula determines, for each school system, the State and local shares of a minimum per pupil funding level. The total cost of the foundation program, which equals the per pupil foundation amount times the full-time equivalent student enrollment count, is shared equally by the local governments and the State. However, as a wealth-equalized formula, the State provides more aid per pupil to school systems in the less wealthy jurisdictions and less aid per pupil to school systems in the more wealthy jurisdictions. In addition, the State provides additional funding to school systems based on their enrollments of students with special needs. The State also provides additional funding to local school systems where educational resource costs are above the State average.

The State provides grants to assist local school systems with the cost of transporting students to and from school. The grants are inflated annually with the increase in the Consumer Price Index for private transportation in the second preceding fiscal year, but increases may not be less than 1% or more than 8% (and are capped at 1% for fiscal 2013 through 2015). Local school systems experiencing increases in enrollment receive an additional grant amount equal to the district's student enrollment increase over the previous year multiplied by the total per pupil transportation aid from the prior year. In addition to the base transportation grants, the State provides local school systems with an additional \$1,000 for each student with special transportation needs.

For each student residing in a "sending county" but attending public school in a "receiving county," the sending county must pay the receiving county the lesser of the two counties' local per student current expense. If the local per student current expense for the sending county is less than it is for the receiving county, then the State pays the receiving county the difference, plus the appropriate State share of the foundation program, for each student residing in the sending county but attending public school in the receiving county.

Background: There is a similar program in Florida called the [McKay Scholarships for Students with Disabilities Program](#) for eligible students with disabilities to attend an eligible public or private school of their choice. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. (Unlike the Florida program, this bill limits eligible schools to those for students with disabilities or that have a specialized program for students with disabilities. The bill also limits the disabilities that a student must have to be eligible to participate in the program.)

Students with Disabilities in Maryland

According to MSDE Special Education/Early Intervention Services data from October 2015, at least 17,379 children could have qualified for the program created under the bill at that time. The distribution of students with the disabilities that qualify for the program is shown in **Exhibit 1**; however, data does not include students with multiple disabilities who may qualify, or students with an emotional disability with a diagnosis of another specified learning disability as the State does not categorize students in this manner. Once a student enters the program, he or she remains qualified for the program until the student graduates from high school or the student's twenty-second birthday (whichever occurs first).

Exhibit 1
Students with Disabilities by Age and Disability Potentially Eligible for Program
October 1, 2015

<u>Age</u>	<u>Speech/Language</u>	<u>Specific Learning Disabilities</u>	<u>Autism</u>	<u>Total</u>
3	597	-	154	751
4	1,593	-	292	1,885
5	2,032	4	443	2,479
6	2,696	91	586	3,373
7	2,592	769	757	4,118
8	2,166	1,787	820	4,773
Total	11,676	2,651	3,052	17,379

Note: Data does not include students with multiple disabilities who may qualify, or students with an emotional disability with a diagnosis of another specified learning disability as the State does not categorize students in this manner.

Source: Maryland State Department of Education, Department of Legislative Services

Free appropriate public education in the least restrictive environment is provided to most students with disabilities in schools within their local school system, at either their local school or a public school with a program for students with disabilities. However, some students receive special education services at nonpublic schools with specialized programs for students with disabilities through a program call nonpublic placements. On October 1, 2015, approximately 3,400 students of all ages were enrolled in nonpublic schools through this program; of those, approximately 2,300 had disabilities that would qualify for the program created under the bill.

The Governor’s proposed fiscal 2017 State budget includes \$279.6 million in State special education formula aid and \$126.6 million for nonpublic placements.

State Fiscal Effect: The bill’s requirements *may* put the State out of compliance with the federal IDEA, thus jeopardizing approximately \$203.4 million in federal IDEA revenues authorized for fiscal 2017. To receive federal IDEA funding, MSDE must make annual assurances to the U.S. Department of Education (ED) that students with disabilities will be provided with a free appropriate public education in the least restrictive environment and ensure that students’ IEPs will be followed. It is unclear how ED will interpret MSDE’s responsibility to provide these things when a student’s parents or guardians choose to participate in the program created by the bill; thus, federal revenues *may* be jeopardized.

The estimated loss in federal revenues is based on funds authorized but not yet appropriated by the federal government. As long as the State is out of compliance with federal law, federal revenues, which are anticipated to increase in future years, will continue to be in jeopardy.

It is unknown how many students will enter a nonpublic placement or other eligible private school due to the scholarship rather than enrolling a regular public school. Nonpublic placement costs vary depending on the student's needs; on average the State spends \$24,200 per student. The bill requires that the scholarship be equal to the amount spent for nonpublic placements. Thus, for every 10 additional students per year who receive a scholarship to attend an eligible private school under the bill, State costs increase by approximately \$242,000.

For the purposes of this estimate, it is assumed that students who enroll in another public school do not affect State aid formulas. Although it is not specified in the bill, it is assumed that students enrolled in the program (either the scholarship or who transfer to another public school) are counted in the State aid funding formula for their original local school system. If students enrolled in the program are not counted in their original local school system for purposes of the education aid formulas, the effect on State aid could be significant, as State aid per student varies by county due to the variance in wealth and cost of education between counties. If students enrolled in the program are not counted in this manner, State expenditures may be affected, perhaps significantly. It is further assumed that the State transportation aid for students is not affected by the bill; however, to the extent that these students are included, State transportation aid increases.

MSDE has advised that six full-time employees at a cost of over \$600,000 per year are required to meet the requirements of the bill. The Department of Legislative Services advises that it is assumed that the administrative tasks required by the bill such as verifying students eligibility, conducting site visits, operating a toll-free hotline, and verifying a sample of endorsed warrants can be handled using two full-time employees. Thus, general fund expenditures increase by \$124,557 in fiscal 2017, which accounts for a 90-day start-up delay following the bill's July 1, 2016 effective date. This estimate reflects the cost of hiring one full-time education program specialist and one full-time office service clerk. It includes salaries, fringe benefits, one-time start-up costs, a toll-free hotline number (at approximately \$1,000 per year), and ongoing operating expenses.

In addition, the bill expands the duration a student with disabilities may receive services to the student's twenty-second birthday. Under current federal law (IDEA), a child with disabilities must 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 age 21. Providing services for these students for this additional time will increase expenditures; the amount cannot be reliably estimated at this time.

It is assumed that any additional cases appealed will not have a substantial financial or operational effect and can be handled with existing resources. It is assumed that the Comptroller can distribute funds for the scholarship program using existing resources.

Local Fiscal Effect: The scholarship is based on the State and local amount for nonpublic placements; thus, both State and local costs for the private school scholarships created under the bill increase. Neither the number of students who may enroll in a private school due to the bill nor the homeschool system can be reliably estimated. The local share of nonpublic placement costs varies by school system, as shown in Exhibit 2. Based on the average statewide cost, for every 10 students who receive a scholarship, local expenditures will increase by \$240,000.

Exhibit 2
Local Cost per Nonpublic Placement
Fiscal 2016

	<u>300% Calculation</u>
Allegany	\$22,136
Anne Arundel	24,831
Baltimore City	23,387
Baltimore	23,855
Calvert	23,817
Caroline	20,074
Carroll	23,630
Cecil	21,066
Charles	23,134
Dorchester	22,756
Frederick	23,955
Garrett	23,879
Harford	22,150
Howard	28,329
Kent	27,259
Montgomery	29,425
Prince George's	23,814
Queen Anne's	21,480
St. Mary's	21,539
Somerset	22,354
Talbot	25,596
Washington	22,551
Wicomico	20,684
Worcester	33,536

Source: Maryland State Department of Education

As explained above, it is assumed that students enrolled in the program (either the scholarship or who transfer to another public school) are counted in the State aid funding formula for their original local school system; thus, State aid for local school systems is unaffected. However, if students are not counted in this manner, State aid for local school systems may be affected, perhaps significantly.

It is assumed that students who enroll in another public school do not affect State aid formulas; however, local expenditures may be affected since the cost to provide services at different public schools may vary especially when considering the cost to provide services required by an IEP. These costs cannot be reliably estimated at this time; however, they may be significant.

Likewise, local school system expenditures increase to provide eligible students with transportation to their chosen public school within their school system. It is unknown how much transportation will cost. However, it will depend on local capacity and the number and geographical distribution. Depending on local circumstances, these costs may be significant. *For the purposes of this estimate*, it is assumed that transportation aid from the State for these students is unaffected.

Additional Comments: Under the bill, additional private schools beyond those that provide services under the existing nonpublic placement program may be eligible to receive scholarship students. The bill allows scholarships to be used at private schools for students with disabilities or with specialized programs for students with disabilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties, Judiciary (Administrative Office of the Courts), Maryland State Department of Education, Department of Budget and Management, Florida Department of Education, Department of Legislative Services

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