

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 541

(Senator Lam, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Education - Personnel Matters - Child Sexual Abuse and Sexual Misconduct
 Prevention

This bill sets forth a process, including requirements for specific documentation regarding whether an individual has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct,” for the hiring of public school and nonpublic school employees who have direct contact with minors. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$95,800 in FY 2020 for the Maryland State Department of Education (MSDE) to investigate potential violations of the bill’s provisions, under the assumptions discussed below. Out-year expenditures reflect annualization. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	95,800	120,900	125,000	129,200	133,600
Net Effect	(\$95,800)	(\$120,900)	(\$125,000)	(\$129,200)	(\$133,600)

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

Local Effect: Local school system expenditures may increase minimally to facilitate the enhanced hiring process for school employees who have direct contact with minors.

Small Business Effect: Minimal impact on contracting agencies.

Analysis

Bill Summary:

Hiring Requirements and Procedures

A county board (including Baltimore City), nonpublic school, and a contracting agency must require an applicant for a position involving direct contact with minors to provide specified information, including the contact information of all former employers in which the applicant was employed in a position that involved contact with minors and a written authorization that consents to the release of records relating to child sexual abuse or sexual misconduct. An application must also provide a written statement of whether the applicant (1) has been the subject of a child sexual abuse or sexual misconduct investigation by specified entities, unless the investigation resulted in specified findings; (2) has ever been disciplined, discharged, nonrenewed, or asked to resign from employment, or has ever resigned from or otherwise separated from employment while such allegations were pending or under investigation, or due to an adjudication or findings of such actions; or (3) has ever had a license, professional license, or certificate suspended, surrendered, or revoked in connection with child sexual abuse or sexual misconduct allegations.

Before hiring an applicant, a county board, nonpublic school, or contracting agency must conduct a review of the employment history of the applicant by contacting the employers listed by the applicant and requesting specified information, including answers to the questions regarding the circumstances specified above. A county board, nonpublic school, or contracting agency must also request a report from MSDE regarding the applicant's eligibility for employment or certification status to determine whether the applicant (1) holds a valid and active certification appropriate for the position and is otherwise eligible for employment and (2) has been the subject of professional discipline related to child sexual abuse or sexual misconduct. If there is a lapse or suspension in MSDE's use of a system or database to check the eligibility for employment or certification status of an applicant, MSDE must notify a county board, nonpublic school, or contracting agency within 48 hours of the lapse or decision to suspend the use of the system or database.

An employer must, no later than 20 days after receiving a request for information, send to the county board, nonpublic school, or contracting agency the information requested on the form prescribed by MSDE. If the information includes an affirmative response to the child sexual abuse or sexual misconduct questions and the entity makes a determination to further consider the applicant for employment, it must request that the former employer provide additional information, including all records related to child sexual abuse or misconduct. An employer receiving such a request must provide the additional information within 60 days to (1) the requesting county board, nonpublic school, or contracting agency and (2) the applicant who is under consideration for employment.

For substitute employees, the employment history review must be done before the employee's initial hiring or placement on the approved substitute employee list of the county board, nonpublic school, or contracting agency. The review remains valid as long as the substitute employee continues to be employed by the same county board or remains on the approved substitute employee list of the nonpublic school or contracting agency. A substitute employee seeking to be added to the substitute employee list of another county board, nonpublic school, or contracting agency must undergo a new employment history review. Any other entity furnishing substitute staffing services to a school entity must comply with the bill's provisions.

For employees of a contracting agency, the employment history review must be performed either at the time of the initial hiring or before the assignment of the employee to perform work for a school entity in a position involving direct contact with minors. The review remains valid as long as the employee remains employed by the same contracting agency.

Before assigning an employee to perform work for a school entity in a position involving direct contact with minors, a contracting agency must inform the school of any instances known to the contracting agency involving child sexual abuse or sexual misconduct, as specified. If the school objects to the assignment after being informed of such instances, the contracting agency may not assign the employee to perform work for the school in a position involving direct contact with minors.

Information and Records – Requirements and Authorized Use

A contracting agency must maintain records documenting employment history reviews for all employees and, on request, must provide a school entity to which an employee is assigned access to the pertinent records.

Information and records about an applicant received by a county board, nonpublic school, or contracting agency pursuant to the bill are not a public record for the purposes of the Maryland Public Information Act. An entity receiving such information and records may (1) use them for the purpose of evaluating the applicant's fitness to be hired or for continued employment and (2) report the information to other specified entities, including MSDE or child protective service agencies, as appropriate.

Authorized Discipline and Civil Penalties

An applicant who provides false information or willfully fails to disclose material information as required must be subject to discipline up to and including termination or denial of employment and may be subject to professional discipline in accordance with MSDE regulations. The willful failure of an employer or former employer to respond to or provide the information and records requested pursuant to the bill may result in civil

penalties or professional discipline, if appropriate. An employer or former employer may not be held liable for failure to respond to a request for information if (1) the laws of the state in which the employer or former employer is located prohibit the release of the information or records requested; or (2) the disclosure of the information and records requested is restricted by the terms of a contract entered into on or before June 30, 2019.

MSDE may initiate disciplinary action before a hearing officer in accordance with regulations against an applicant, an employee, a contracting agency, or a school administrator for willful violations of the bill's provisions. MSDE may adopt regulations establishing procedures relating to disciplinary proceedings and the assessment of penalties in accordance with the bill's provisions.

Miscellaneous Provisions

A county board, nonpublic school, or contracting agency may not enter into any contract or agreement, including collective bargaining agreements and employment contracts, that have specified consequences, including having the effect of suppressing information relating to an investigation or disciplinary action in response to a report of suspected child sexual abuse or sexual misconduct by a current or former employee. A provision executed, amended, or entered into on or after the bill's July 1, 2019 effective date that is contrary to these prohibitions is void and unenforceable.

The bill may not be construed to (1) prevent a prospective employer from conducting further investigations of prospective employees, requesting applicants to provide additional background information, or requesting that an employer or a former employer provide more information; (2) relieve a county board, nonpublic school, contracting agency, or any other mandated reporter of its legal responsibility to report suspected incidents of child sexual abuse or sexual misconduct in accordance with State law or MSDE's reporting requirements; or (3) prohibit the right of the exclusive representative under a collective bargaining agreement to grieve and arbitrate the validity of an employee's termination or discipline for just cause or the causes set forth in the bill.

The bill establishes immunity provisions for individuals who provide information or records in good faith as specified.

Selected Definitions

"Child sexual abuse," as defined in Section 6-113.1 of the Education Article, means an act involving a minor or student by an adult that constitutes a sexual offense under the laws of the State or any sexual contact between an adult and a minor.

“Direct contact with minors” means the possibility of care, supervision, guidance, or control of a minor or routine interaction with a minor.

“Sexual misconduct,” as defined in Section 6-113.1 of the Education Article, is an act by an adult, including oral, nonverbal, written, or electronic communication, or a physical activity directed toward or with a minor that is designed to promote a romantic or sexual relationship with the minor, including (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) grooming behaviors; (6) self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and (7) a sexual, indecent, romantic, or erotic contact with the minor.

Current Law: A county board may not knowingly hire or retain any individual who has been convicted of specified crimes, including crimes of violence and child sexual abuse. Nonpublic school contracts and local school system contracts must prohibit contractors or subcontractors from knowingly assigning an employee to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of such crimes.

Employers and employees who care for or supervise children or have access to children in specified facilities, including public schools and private or nonpublic schools that are required to report to the State Board of Education, must apply for a criminal history records check. Contractors and subcontractors must require an employee who has direct, unsupervised, and uncontrolled access to children in specific facilities, including schools, to submit to a criminal history records check.

Pursuant to § 5-423 of the Courts and Judicial Proceedings Article, an employer acting in good faith may not be liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer, as specified.

State Fiscal Effect: Although no entity is specifically tasked with ensuring compliance with the bill’s provisions, MSDE is authorized to adopt regulations to establish procedures for disciplinary proceedings and the assessment of penalties against applicants, employees, contracting agencies, or school administrators for willful violations. For purposes of this fiscal and policy note, it is assumed that MSDE adopts regulations that, at a minimum, establish a process to respond to reports of potential violations of the bill’s provisions. It is further assumed that when a report is received, existing staff are not able to absorb the responsibility of investigating the local school system, nonpublic school, or contracting agency, or applicant for employment to determine whether a willful violation occurred and disciplinary procedures should be initiated. Accordingly, general fund expenditures increase by \$95,848 in fiscal 2020, which assumes a 90-day start-up delay. This estimate

reflects the cost of hiring one staff member to investigate potential violations of which MSDE has been made aware. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses

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Salary and Fringe Benefits	\$89,739
Operating Expenses	<u>6,109</u>
Total FY 2020 State Expenditures	\$95,848

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. To the extent that MSDE receives a significant number of reports regarding potential violations, additional staff may be needed in future years.

The Department of Legislative Services (DLS) notes that MSDE provided an estimate based on an assumption that a more robust enforcement effort would be implemented, including monitoring each of the local school systems, nonpublic schools, and contracting agencies for compliance with the established regulations. MSDE advised that based on that implementation, nine staff will be necessary in order to conduct audits of each local school system, each nonpublic school, and each contracting agency.

However, DLS advises that the bill does not require any proactive enforcement by MSDE. If MSDE adopts regulations that include provisions regarding active monitoring of the employment records of local schools systems, contracting agencies, and nonpublic schools, then any impact of the regulations would be accounted for in the fiscal analysis of the regulation prepared by DLS for the Joint Committee on Administrative, Executive, and Legislative Review. Accordingly, this fiscal and policy note does not account for any expenditures associated with the potential monitoring of the entities affected by the bill for compliance.

The bill also requires county boards, nonpublic schools, and contracting agencies to request a report from MSDE regarding the applicant's eligibility for employment or certification status, as specified. MSDE advises that some larger jurisdictions have individuals with authorized access to MSDE's database containing certification information and do not have to *directly* request a report from MSDE. For purposes of this fiscal and policy note, it is assumed that practice may continue.

Local Fiscal Effect: School system expenditures may increase minimally to account for the additional effort necessary to screen potential school employees who will have direct contact with minors. While some of the bill's requirements (*e.g.*, verifying that an applicant holds a valid certification appropriate for the position) are already done as part of the routine hiring process, other provisions may constitute a new obligation. For example, DLS assumes that some verification of an applicant's employment history is standard procedure

in all jurisdictions, particularly if the prior employment history is recent and/or relevant to the position for which the applicant is applying. However, the bill requires county boards to contact *all* former employers that employed the applicant in a position involving direct contact with minors, with no limitations on how long ago the employment occurred or how relevant the prior employment is to the position for which the applicant is applying. Anne Arundel County Public Schools (AACPS) advises that it screens thousands of applicants in order to hire individuals for hundreds of positions each school year, and that much of this work is done in the summer. Without actual experience under the bill, AACPS cannot reliably estimate whether additional staff is required, but *if* an additional staff specialist is needed, expenditures increase by a minimum of \$100,000 annually. Furthermore, because of the bill's July 1, 2019 effective date and the inability to hire on a provisional basis, AACPS anticipates difficulty in staffing schools in time for the 2019-2020 school year, as there will be limited time to modify hiring schedules and practices in order to accommodate the additional work anticipated because of this bill. Other jurisdictions that hire a majority of new positions in the summer may experience similar difficulties, particularly in the first year of implementation.

Small Business Effect: It is assumed many contracting agencies that qualify as a small business already comply with some of the bill's requirements as part of routine hiring practices. However, some of these entities *may* require additional staff time to conduct more rigorous employment history checks and/or need to develop or enhance database systems in order to properly track and maintain employee and applicant information.

Additional Information

Prior Introductions: HB 1571 of 2018, a similar bill, passed the House as amended and received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 486 (Delegate Wilson, *et al.*) - Ways and Means.

Information Source(s): Anne Arundel County Public Schools; Governor's Office; Maryland State Department of Education; Department of Human Services; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History:
mm/rhh

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Analysis by: Jennifer K. Botts

Direct Inquiries to:

(410) 946-5510

(301) 970-5510