

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

(Delegate Wilkins, *et al.*)

House Bill 1204

Ways and Means

Judicial Proceedings

**County Boards and Public and Nonpublic Prekindergarten Programs and
Schools – Discrimination – Prohibition**

This bill prohibits a local board of education, public prekindergarten program, nonpublic prekindergarten program that receives State funds, public primary or secondary school, or nonpublic primary or secondary school that receives State funds from refusing enrollment of, expelling, withholding privileges from, or otherwise discriminating against any student or prospective student because of the individual’s race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability. Further, retaliatory actions against a student or parent or guardian of a student who files a complaint alleging specified discrimination is prohibited. The bill establishes a complaint, mediation, and appeal process for violations. All or part of specified funding may be withheld from a board, program, or school that violates the nondiscrimination requirements. There are additional penalties, including reimbursement of specified State funds, for specified prekindergarten providers that violate the nondiscrimination requirements. **The bill generally takes effect July 1, 2020, except that provisions related to nondiscrimination requirements and penalties for specified prekindergarten providers are contingent on enactment of Senate Bill 1000/House Bill 1300; provisions related to the definition of “race” take effect October 1, 2020, contingent on the enactment of Senate Bill 531/House Bill 1444.**

Fiscal Summary

State Effect: The State Superintendent can mediate, make required decisions, and direct the Comptroller to withhold funding from violators and collect State funds from specified prekindergarten violators using existing resources. The Comptroller can withhold funds as directed using existing resources. The bill is not anticipated to materially affect the workload of the Judiciary or the Office of Administrative Hearings. No material effect on revenues.

Local Effect: Local school systems can comply with the bill using existing resources. The bill is not anticipated to materially affect the workload of the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill's provisions do not apply to: (1) with respect to discrimination on the basis of sex, a nonpublic prekindergarten program or nonpublic school that limits, and continually since the time of its establishment has limited, admission to students of only one sex; (2) with respect to discrimination on the basis of religion, a nonpublic prekindergarten program or nonpublic school that is affiliated with a religious institution that declines to instruct students in the tenets of a religion that is different from the religion with which the program or school is affiliated; and (3) with respect to discrimination on the basis of disability, a nonpublic prekindergarten program or nonpublic school that provides a student with a reasonable accommodation under federal law. The bill's provisions do not require a nonpublic prekindergarten program or nonpublic school to enroll, retain, or extend privileges to a student or prospective student who does not meet the usual and regular qualifications requirements, and standards of the program or school, provided that the denial is not based on discrimination on the specified grounds.

Written Antidiscrimination Policy

Each local board of education must adopt and maintain a written antidiscrimination policy, in accordance with Title 26, Subtitle 7 of the Education Article, for the local school system that prohibits specified discrimination. Each nonpublic prekindergarten program that receives State funds and nonpublic primary or secondary school that receives State funds must develop and maintain a written antidiscrimination policy that prohibits specified discrimination.

Complaint Resolution Process

A person alleging specified discrimination may file a complaint with the State Superintendent of Schools. A complaint must specify the relief or remedy requested. A parent or guardian may submit a complaint on behalf of a minor.

On receipt of a complaint, the State Superintendent must provide notice of the complaint to the program or school and the local school board in which the public prekindergarten program or public primary or secondary school is located. The program or school and if appropriate local board must submit a response to the State Superintendent as specified.

The State Superintendent must attempt to mediate an agreement to remedy and eliminate the discrimination as specified and issue a decision to both parties as specified. If the State Superintendent finds that a local board, program, or school violated the nondiscrimination requirements established by the bill, a decision *may* require the Comptroller to withhold funding from the program or school in an amount determined by the State Superintendent in accordance with law.

A complainant alleging that a local board, program, or school did not remedy or eliminate the discrimination as agreed or required under the decision issued by the State Superintendent may reopen a complaint without filing a new complaint or engaging in mediation. If the State Superintendent finds that a local board, program, or school did not remedy or eliminate the discrimination as agreed or required, the State Superintendent must issue an updated written decision to both parties *requiring* the Comptroller to withhold funding from the program or school in an amount determined by the State Superintendent in accordance with law.

A complainant or respondent may appeal a decision by the State Superintendent to the Office of Administrative Hearings as specified. An appeal hearing must be held in the county where the alleged discriminatory act occurred. If, after reviewing all of the evidence, the administrative law judge finds that the respondent has engaged in discrimination, the administrative law judge must (1) issue a decision and order stating the judge's findings of fact and conclusion of law and (2) issue and cause to be served on the respondent an order requiring the respondent to cease and desist from engaging in the discrimination and take affirmative action to effectuate the purpose of the bill.

The State Board of Education, in consultation with the State Superintendent, must adopt regulations to establish procedures for complaint processing, mediation, and enforcement and otherwise implement the requirements of the bill.

Blueprint for Maryland's Future – Prekindergarten Discrimination

The bill establishes that if a prekindergarten provider participating in the prekindergarten expansion program under the Blueprint for Maryland's Future (Senate Bill 1000/ House Bill 1300) violates the nondiscrimination provisions established by the bill and does not reach a mediated agreement as specified, the provider may not continue to be an eligible prekindergarten provider and must reimburse the Maryland State Department of Education (MSDE) all public funds provided under the Publicly Funded Full-Day Prekindergarten Program minus any amount received from the child care scholarship program. An ultimate decision, as specified, that an eligible prekindergarten provider engaged in discrimination must be deemed a finding that the provider violated the nondiscrimination requirements under the bill. If enacted, HB 1300 takes effect July 1, 2020.

Definition of “Race”

Senate Bill 531/House Bill 1444 of 2020 define “race” for the purposes of specified State laws prohibiting discrimination, to include traits historically associated with race, including hair texture, afro hairstyles, and protective hairstyles. If enacted, the bills take effect October 1, 2020.

Current Law/Background: State regulations establish that all public school students, regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability have the right to educational environments that are safe, appropriate for academic achievement, and free from harassment. State law also requires *all* individuals who are ages 5 or older and younger than age 21 to be admitted, free of charge, to the public schools of the State.

Federal Nondiscrimination Laws

Numerous provisions of federal law prohibit discrimination in education. The federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. Private schools receiving federal funds must comply with federal law provisions regarding discrimination. For example, the federal Civil Rights Act of 1964 also prohibits discrimination by recipients of federal funds on the basis of race and national origin. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex by private schools receiving federal funding. Federal law includes exceptions for the admissions practices of single-sex schools. The Americans with Disabilities Act (ADA) also prohibits state and local governments from discriminating on the basis of disability. Private schools not run or controlled by religious organizations must abide by the ADA.

State Aid to Nonpublic Schools

No State law directly applies to private schools that receive State funds to prohibit them from discrimination. However, pursuant to language in the annual budget bill, a nonpublic school participating in the Aid to Nonpublic Schools Program or the Broadening Options and Opportunities for Students Today (BOOST) program must certify compliance with Title 20, Subtitle 6 of the State Government Article, which prohibits discrimination in employment. A nonpublic school participating in the program may not discriminate in student admissions, retention or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, sexual orientation, or gender identity or expression. A nonpublic school that does not comply with these requirements must return the BOOST scholarship funds and may not charge the student tuition and fees instead. The only other legal remedy for a violation of these provisions is ineligibility for participation in the programs, as specified. The budget bill also specifies that nonpublic schools must comply

with Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin.

The State provides some aid to nonpublic schools using special funds from the Cigarette Restitution Fund, which includes the State's share of the national tobacco settlement. All of the programs are administered by MSDE. There is a nonpublic school aid program for textbooks, computer hardware, and computer software that are secular (*i.e.*, nonreligious) in character and acceptable for use in any public elementary or secondary school in Maryland for use by students in eligible schools. The fiscal 2021 budget includes \$6.0 million in such funding; the program has been funded at this level in recent years. MSDE assures that the purchases are made from a list of qualified vendors and that the savings are used by the schools to reduce the cost of textbooks and computer hardware and software for students. To be eligible to participate in the program, a nonpublic school must hold a certificate of approval or be registered with the State Board of Education; not charge more tuition than the statewide average per pupil expenditure by local education agencies (LEAs), as calculated by the department, and meet the nondiscrimination requirements as specified above.

The State also provides some scholarship aid for students who are eligible for free and reduced-price meals to attend nonpublic schools, known as the BOOST program, subject to several specified conditions in the budget bill. The amount of a scholarship may not exceed the statewide average per pupil expenditure by LEAs or the tuition of the nonpublic school, whichever is less. To be eligible to participate in the program, a nonpublic school must participate in the aid to nonpublic schools for textbooks and computer hardware and software program described above. The fiscal 2021 budget includes \$7.4 million for the program. The fiscal 2021 budget also includes \$3.5 million for nonpublic school safety grants.

In addition, the State provides capital funding for the Nonpublic Aging Schools Program. To be eligible to participate in the program, like BOOST, a nonpublic school must participate in the textbook and computer hardware and software program. Other eligibility requirements are specified in the annual capital budget bill. The fiscal 2021 capital budget includes \$3.5 million for the program, the same funding level as recent years.

In fiscal 2018, funding awards were rescinded from a Harford County Lutheran school after the BOOST Advisory Board was alerted that language in the school's handbook reserved the right to deny admission to gay and transgender students.

Publicly Funded Prekindergarten

If enacted, the Blueprint for Maryland's Future – Implementation (House Bill 1300) phases in a new funding formula for voluntary full-day prekindergarten for four-year-olds and three-year-olds from low-income families beginning in fiscal 2023, defined as at or

below 300% of the federal poverty level (FPL), which is approximately \$79,000 for a family of four. Beginning in fiscal 2025, State funding is provided for four-year-olds from families with income between 300% and 600% FPL through a sliding scale if space is available. Public and private providers are eligible to receive State grant funds if they meet the requirements as specified.

In all jurisdictions, local school systems are required to provide publicly funded half-day prekindergarten to four-year-old children from families with incomes at or below 185% FPL. Jurisdictions also provide prekindergarten services for three- and five-year-old students.

Chapter 2 of 2015 established the Prekindergarten Expansion Grant program, which offers competitive grants to qualified public and private prekindergarten providers to serve four-year-olds from families with incomes at or below 300% FPL. The grants also allow programs to improve existing slots by converting half-day slots to full-day slots, limiting class sizes, and providing professional development among other efforts. Beginning in 2015, enrollment includes publicly funded slots in private programs. In 2020, 927 children were served in publicly funded slots in private programs, compared to 421 in 2015. Chapters 6 and 607 of 2017 further increased State funding for prekindergarten by providing supplemental grants to local school systems in which all prekindergarten students were provided full-day prekindergarten (Baltimore City and Garrett, Kent, and Somerset counties received these grants) for fiscal 2018 through 2020, which was extended through fiscal 2021 by Chapter 771 of 2019.

State Superintendent Enforcement

The State Superintendent of Schools must enforce the provisions of the Education Article that are within his or her jurisdiction and the bylaws, rules, and regulations of the State Board of Education. If an educational institution or local board of education violates any of these provision, the State Superintendent, by written notice, may require the State Comptroller to withhold from that institution or board (1) all or any part of an appropriation made by the General Assembly and (2) all or any part of any other payment from funds budgeted by the State.

Nondiscrimination with Regards to the Definition of “Race”

In February 2020, Montgomery County’s Creating a Respectful and Open World for Natural Hair Act went into effect, making the county the first in the United States to ban discrimination based on hairstyles. The Act prohibits discrimination based on natural hairstyles such as braids, locks, afros, curls, and twists. Similar legislation has been enacted in California, New Jersey, and New York; similar federal legislation has also been introduced.

Discrimination based on race is prohibited under specified State laws, including those prohibiting discrimination in employment, housing, and places of public accommodation. However, these laws do not specify a definition for race.

Small Business Effect: Many nonpublic prekindergarten, primary, and secondary programs and schools are small businesses. Nonpublic programs and schools that receive State funding will need to follow the nondiscrimination requirements of the bill or choose not to receive State funding. Nonpublic programs and schools that violate the nondiscrimination requirements may have funds appropriated by the General Assembly or budgeted by the State withheld. These funds must be withheld if the State Superintendent finds that a program or school did not remedy or eliminate the discrimination as agreed to or required under an initial decision. In addition, contingent on the passage of the Blueprint for Maryland's Future legislation, prekindergarten providers participating in the prekindergarten expansion under the Blueprint for Maryland's Future that violate the nondiscrimination provisions established by the bill and does not reach a mediated agreement as specified, the provider may not continue to be an eligible prekindergarten provider and must reimburse MSDE all public funds provided under the Publicly Funded Full-Day Prekindergarten Program minus any amount received from the child care scholarship program.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 993 (Senator McCray) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Comptroller's Office; Maryland State Department of Education; Office of Administrative Hearings; St. Mary's County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2020
rh/rhh Third Reader - April 23, 2020
Revised - Amendment(s) - April 23, 2020
Revised - Budget Information - April 23, 2020

Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510