

Department of Legislative Services

Maryland General Assembly

2021 Session

FISCAL AND POLICY NOTE

First Reader

Senate Bill 98

(Senator McCray)

Judicial Proceedings

County Boards and Public and Nonpublic Prekindergarten Programs and Schools - Discrimination - Prohibition

This bill prohibits a local board of education, public prekindergarten programs and primary and secondary schools, and nonpublic prekindergarten programs and primary and secondary schools that receive 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. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase for the Maryland State Department of Education (MSDE) by \$39,900 in FY 2022 and by \$49,300 in FY 2026 to implement the bill’s requirements as discussed below. The Comptroller can withhold funds as directed using existing resources. The bill is not anticipated to materially affect the workload of the Judiciary, the Maryland Commission on Civil Rights, or the Office of Administrative Hearings (OAH). No effect on revenues.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	39,900	44,600	45,800	47,500	49,300
Net Effect	(\$39,900)	(\$44,600)	(\$45,800)	(\$47,500)	(\$49,300)

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

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: Minimal/none. Most private schools participating in the State programs are nonprofit.

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 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 OAH 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.

Current Law: 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.

Definition of Race

Discrimination based on race is prohibited under State laws, including those prohibiting discrimination in employment, housing, and places of public accommodation. Chapter 473 of 2020 defines “race,” for the purposes of laws prohibiting discrimination, as including

traits associated with race, including hair texture, afro hairstyles, and protective hairstyles; “protective hairstyle” is defined as a hairstyle that includes braids, twists, and locks.

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 (nonpublic) schools receiving federal funds must comply with federal law provisions regarding discrimination. 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 ADA.

State Aid to Nonpublic Schools – Nondiscrimination Requirements

No State law directly applies to private schools that receive State funds to prohibit them from discrimination. However, pursuant to language in the annual operating 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 programs may not discriminate in *student admissions, retention, or expulsion or otherwise discriminate* 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.

State Aid to Nonpublic Schools – Eligibility and Funding

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. The Aid to Nonpublic Schools program is 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 proposed fiscal 2022 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 through 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 program and comply with the nondiscrimination requirements described above. The Governor's proposed fiscal 2022 budget includes \$10.0 million for the program. The proposed fiscal 2022 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 Aid to Nonpublic Schools program and comply with the nondiscrimination requirements. Other eligibility requirements are specified in Chapter 9 of 2018 (fiscal 2019 capital budget bill). The proposed fiscal 2022 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

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% of the federal poverty level (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. The Governor's proposed fiscal 2022 budget includes \$29.6 million in special and federal funds for the Prekindergarten Expansion Program Financing Fund.

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 provisions, 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.

State Expenditures: MSDE advises that the agency requires three full-time staff members in order to process discrimination complaints and appeals, conduct mediations, and direct the Comptroller to administer fiscal penalties as required by the legislation. The Department of Legislative Services (DLS) notes that the bill primarily codifies annual budget language regarding nondiscrimination requirements. Although processing complaints and conducting mediation are new responsibilities mandated by the bill, the scale at which MSDE will have to process these complaints is likely to be small. Additionally, the largest costs are likely to be legal costs for those complaints that are appealed and, therefore, primarily borne by OAH, which has advised existing resources can meet the requirements of the bill. Therefore, DLS estimates that MSDE requires only one half-time regular staff position to fulfill the bill's requirements. However, if the volume of complaints is large, additional staff may be needed.

General fund expenditures increase for MSDE by \$39,859 in fiscal 2022. The estimate reflects the cost of a half-time management associate to manage complaints, with a 90-day start-up delay. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Out-year estimates reflect annualization and ongoing expenses.

Regular Position	0.5
Salary and Fringe Benefits	\$34,523
One-time Start-up Costs	5,090
Ongoing Operating Expenses	<u>246</u>
Total FY 2022 State Expenditures	\$39,859

Additional Information

Prior Introductions: SB 993 of 2020 had a hearing in Judicial Proceedings, but no further action was taken. Its cross file, HB 1204, passed the House with amendments and was referred to Judicial Proceedings, but no further action was taken.

Designated Cross File: HB 155 (Delegate Wilkins) - Ways and Means.

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

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Analysis by: Michael E. Sousane

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