

BILL: House Bill 782
TITLE: Education - Maryland Office of the Inspector General for Education - Powers and Notifications
DATE: February 22, 2023
POSITION: OPPOSE
COMMITTEE: Ways and Means
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 782 in light of the significant increase in scope of authority and agency bureaucracy proposed to be devoted to the Office of the Inspector General for Education (OIGE). MABE is supporting other legislation pending in the 2023 session, House Bill 272, which would more modestly increase the scope of authority of the OIGE.

MABE firmly believes that fiscal, academic and overall performance accountability are comprehensively addressed through a panoply of state and federal audits, including the legislature's Office of Legislative Audits, and the Accountability and Implementation Board (AIB) established by the recently enacted Blueprint for Maryland's Future. MABE believes that the OIGE established in 2019 already meaningfully and adequately supplements the accountability system under its existing scope of authority.

The Blueprint law adopts the Kirwan Commission's recommendation to establish an independent body responsible for planning, overseeing implementation, and leveraging the withholding of state funding in order to achieve the long-term goals of the Blueprint. Local school systems must develop Blueprint implementation plans to implement each element of the Blueprint. The law more specifically requires local plans to show how the school system will achieve the following:

- Adapt curriculum, instruction, and the organization of the school day to enable more students to achieve college and career readiness by the end of 10th grade, to provide students with needed services including community-partnered behavioral health services if appropriate, and to identify students who are falling behind and develop a plan to get them back on track;
- Close student achievement gaps listed under § 5-408 of the Education Article within the local system (race, ethnicity, disability status, household income, linguistic status, and any other student group characteristics that feature achievement gaps as determined by the AIB;
- Avoid the disproportionate placement of students with particular racial, ethnic, linguistic, economic, or disability status characteristics with novice teachers or teachers providing instruction in fields in which they lack expertise; and
- Use additional funds for teacher collaborative time prioritized based on availability of a sufficient number of high-quality teachers.

Beginning in FY 2023, the AIB is required to withhold 25% of the increase in the State share of major education aid over the amount provided in the current fiscal year. For FY 2023 only, the AIB must release funds withheld if it finds that a local school system has met the minimum guidelines for the submission of the initial implementation plan. In FY 2024 and FY 2025 the AIB must release funds if it finds that a local school system or public school has developed an initial implementation plan and received approval for its plan and for any subsequent modifications (Md. Code Ann., Ed. Art. § 5-405; as amended by HB 1450 (2022)).

Beginning in FY 2026, the AIB is required, merely, to consider releasing withheld funds if it determines that a public school or local school system has made sufficient progress on an implementation plan or taken appropriate steps to improve student performance. The AIB may also consider and act on recommendations to release funds from MSDE, the CTE Committee, or an expert review team.

The AIB may withhold more than 25% of the increase in the state share of major education aid over the amount provided in the current fiscal year from a public school or local school system, if, in the judgment of the AIB: (1) a local school system has not made satisfactory efforts to develop or revise its Blueprint implementation plan; (2) a public school or local school system has not made sufficient progress on its implementation plan; or (3) a public school or local school system has not taken appropriate steps to improve student performance.

If the AIB determines that a public school or local school system has made progress in some areas but not in others, the AIB may determine that a portion of the funds may be released while a portion may be withheld. Also, the AIB may determine it is necessary to release or withhold funds for the current fiscal year.

Beyond the Blueprint, fiscal accountability is provided in myriad ways through the local board's annual, public and transparent, budget process; the oversight provided by MSDE and the General Assembly; each local government funding authority's budget process; and numerous system-wide and programmatic audits. Among these many audits are those conducted on a 6-year cycle by the Office of Legislative Audits.

Maryland's local school systems are already held accountable through an extensive array of audits mandated under state and/or federal laws and regulations. Examples, include the following:

- Annually - independent audit conducted by a Certified Public Accountant firm that produces audited financial statements and Audit Communications. Due to MSDE by September 30. This audit is required by state law.
- Annually - compliance audit and audit of Schedule of Expenditures of Federal Awards in compliance with OMB Circular A-133. Due to MSDE by December 31. This audit is required by state law.
- Annually - MSDE program reviews ranging from Title I, to special education, Medicaid, to food services - most of which are on-site reviews performed by MSDE program staff. Reports are filed by MSDE staff and any findings require a corrective action plan that must be approved by MSDE staff.
- Bi-annually - Maryland State Department of Education (MSDE) audit of major state aid programs and enrollment verification audit. MSDE Auditors are typically on site for approximately two (2) weeks and they audit two years' worth data in that time period. A report is issued and any financial findings must be repaid to MSDE and corrective actions must be taken to ensure compliance with recommendations.
- Tri-annually - audit performed by a Certified Public Accountant firm hired by the Maryland State Retirement System (MSRS) to audit payments made annually by the local public school systems to the MSRS. This audit is required by state law.
- Every five (5) years - Public School Construction Program audit performed by Interagency Committee (IAC) for School Construction auditors. They audit major school construction projects and the compliance with Minority Business Enterprise requirements. Typically on site for three (3) days.

- Periodically (at random) - audits of federal funds by federal auditors. Typically of major federal programs such as Medicaid billing, Title I, and food services. These audits are extensive and generally involve the respective Federal Department's Office of the Inspector General.

In addition to the extensive, routine audits described above, current state law provides for a county governing body, the Office of Legislative Audits, or the State Superintendent to require an audit and/or a corrective action plan from a public school system under the following conditions:

- Education Article, section 5-110, provides for a county governing body to contract for a performance audit of their local public school system at any time. The cost of the audit is to be shared equally by the county governing body and the school system.
- Education Article, section 5-114(d)(5), provides for the State Superintendent and the Office of Legislative Audits to request any financial information from a local school system pertaining to a deficit or structural deficit of the system and obtain a copy of a corrective action cost containment plan developed by the local school system.
- Failure to comply with the auditors and MSDE could result in the withholding of state funds. The State Superintendent has the authority to direct the Comptroller to withhold 10% of the next and ensuing state aid installments until compliance is reached.

In these ways, Maryland's local school systems are held to very high standards of accountability, including being subject to investigations by the OIGE under current law and the office's current scope of authority. MABE's objections to House Bill 782 are based on the bill's considerable expansion of this scope of authority, including the detailing of local school system staff already challenged by the workload of supporting the audits and reporting requirements described above and mandated by the Blueprint.

Today, the Blueprint for Maryland's Future is attracting national attention to the visionary and comprehensive reforms spanning from prekindergarten to dual enrollment and career and technical education. The Blueprint reflects the fact that school system fiscal, academic and overall performance accountability is imperative to maintaining the public's trust and confidence in the investments of the state and local government revenues in our public schools.

Again, MABE firmly believes that the OIGE has ample authority and resources under current law to fulfill the office's mission. For these reasons, MABE requests an unfavorable report on House Bill 782.