



MARYLAND OFFICE OF THE
INSPECTOR GENERAL FOR EDUCATION

Richard P. Henry
Inspector General

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Deputy Inspector General

February 27, 2024

To: The Honorable Eric Ebersole
Chairperson
House Ways and Means Committee
Education Subcommittee
305 Lowe House Office Building
6 Bladen Street
Annapolis, Maryland 21401

The Honorable Dr. April Miller
Bill Sponsor
Maryland House of Delegates

From: Richard P. Henry
Inspector General
Maryland Office of the Inspector General for Education

Subj.: House Bill 0746

Chairperson Ebersole,

As the Inspector General for the Office of the Inspector General for Education or OIGE, I wish to provide you and the committee members with additional information supporting my request for a FAVORABLE report concerning HB0746.

I am providing the following breakdowns and clarifications as part of each proposed change and why these changes are essential to the continued continuity of my office.

9.10-102

Starting with page 2, lines 22 through 26

Maryland Office of the Inspector General for Education
100 COMMUNITY PLACE, CROWNSVILLE, MARYLAND 21032

Tip Line: 1-844-OIGETIP (644-3847) **Email:** oige.tips@maryland.gov **Website:** oige.maryland.gov

These changes ensure that the statute fully reflects the original statutory intent of the legislature for the OIGE to provide accountability and transparency in the expenditure of public funds for education in the State.

The legislature charged the OIGE with specific entities listed in Education Code 9.10-104. Many of these are subject to State and Federal regulations, including the Family Educational Rights and Privacy Act or FERPA.

Some have expressed concerns that the currently enacted legislature is subject to differing interpretations because it lacks specific language regarding OIGE's role under FERPA. For example, as a "state educational authority," the Maryland State Department of Education (MSDE) has a well-established role under FERPA; therefore, there is no such interpretation issue.

The choice of this language addresses these possible FERPA issues by making 9.10-102 consistent with Title 34 of the Code of Federal Regulations Subtitle A, Part 99. This clarification would, in turn, minimize variations in statutory interpretation by the 24 different Circuit Courts if litigation over these issues ever occurred.

9.10-103

(c) (2)

Page 3, lines 19-20

This establishes a term limit for the Inspector General.

(d) (1)

Page 3, lines 25-30

There are no technical changes; this aligns with the legislative structure.

(d) (2)

Page 4, lines 1-11

The specific language was chosen to reflect the time constraints each individual listed would be under. The Department of Legislative Services advised that the language effectively accomplishes the changes sought without being overly cumbersome, making such a transition as efficient as possible.

(g)

Page 4, lines 27-31, and Page 5, lines 1-11

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No technical changes. The specific language was chosen to ensure the OIGE may, with the consent and agreement of an agency head, temporarily detail an individual, if necessary, to serve as a subject matter expert (SME) of the State of Maryland.

9.10-104

(a) (1)

Page 5, lines 14-16

This language was chosen to reinforce the statutory intent regarding FERPA.

(a) (3)

Page 5, lines 24-29

There are no technical changes; this aligns with the legislative structure.

(b) (4)

Page 6, lines 8-9

This language was chosen to reinforce the statutory intent regarding FERPA.

(d) (1)

Page 6, lines 20-21 and

(e) (1) (i)

Page 6, lines 30-31

This language was chosen to reinforce the statutory intent regarding FERPA.

(e) (2)

Page 7

This was a change to make the right to counsel consistent with the right to counsel as guaranteed by the Maryland and Federal Constitutions and not to expand them beyond those well-established rights.

(f)

Page 7, lines 20-23

The changes are an attempt to better reflect the statutory intent of the legislature by cross-referencing a definition of a whistleblower.

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(j)

Page 8, lines 6-16

The Office of the Attorney General (OAG) represents the State Board of Education (SBOE), MSDE, OIGE, and other entities. This change allows OIGE to seek outside counsel and choose its own attorney if it believes a conflict exists.

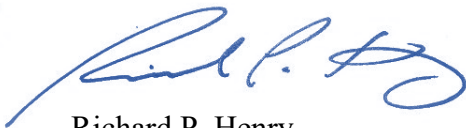
9.10-106

Page 9, lines 6-18

This language is intended to allow local school agency staff to report allegations of fraud, waste and abuse, and financial mismanagement directly to the OIGE. This proposed change follows the same authority afforded to the Office of Legislative Audits (OLA) to State of Maryland employees.

In closing, and as I had mentioned during my testimony to the full committee, these changes are administrative in nature, but the authority to enact these changes lies solely with this esteemed committee. I hope the explanations provided afford you and the committee members further information and clarification during your review of this essential bill proposal.

Respectfully,



Richard P. Henry
Inspector General

Cc: The Honorable Vanessa E. Atterbeary – Chairperson, Ways and Means Committee
The Honorable Jheanelle K. Wilkins, Co-Chairperson, Ways and Means Committee
The Honorable Kris Fair
The Honorable Kevin B. Hornberger
The Honorable Edith J. Patterson
The Honorable Joe Vogel
The Honorable Chao Wu

Attachment

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HOUSE BILL 746

F1

4lr2513

By: **Delegate Miller**

Introduced and read first time: January 31, 2024

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Maryland Office of the Inspector General for Education – Powers**
3 **and Notifications**

4 FOR the purpose of providing that the Maryland Office of the Inspector General for
5 Education is a state educational authority under a certain federal law; providing that
6 the Maryland Office of the Inspector General for Education is the State unit
7 authorized to audit or evaluate certain education programs; prohibiting the
8 Inspector General for Education from serving more than a certain number of full
9 terms; requiring the Governor, the Attorney General, and the State Treasurer to
10 provide the Inspector General with a certain notice and opportunity for a hearing
11 before removing the Inspector General; authorizing the Inspector General to appoint
12 and retain certain employees and consultants, including Deputy Inspectors General;
13 expanding the types of reviews the Inspector General may conduct and the entities
14 the Inspector General may review; requiring the Inspector General to advise a
15 person of the right to counsel when a subpoena is served if the subpoena requires an
16 appearance; authorizing a circuit court to grant appropriate relief after conducting
17 a certain hearing in a criminal proceeding; authorizing the Inspector General to
18 obtain legal services from a person outside the Office of the Attorney General under
19 certain circumstances; requiring each unit of government or county board of
20 education that received State education funds to post a certain notice and, on request
21 of the Maryland Office of the Inspector General for Education, distribute certain
22 information; and generally relating to the Maryland Office of the Inspector General
23 for Education.

24 BY repealing and reenacting, without amendments,
25 Article – Education
26 Section 9.10–101 and 9.10–105
27 Annotated Code of Maryland
28 (2022 Replacement Volume and 2023 Supplement)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Education
2 Section 9.10–102 through 9.10–104
3 Annotated Code of Maryland
4 (2022 Replacement Volume and 2023 Supplement)

5 BY adding to
6 Article – Education
7 Section 9.10–106
8 Annotated Code of Maryland
9 (2022 Replacement Volume and 2023 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
11 That the Laws of Maryland read as follows:

12 **Article – Education**

13 9.10–101.

14 (a) In this title the following words have the meanings indicated.

15 (b) “Inspector General” means the Inspector General in the Maryland Office of
16 the Inspector General for Education.

17 (c) “Office” means the Maryland Office of the Inspector General for Education.

18 9.10–102.

19 (a) There is a Maryland Office of the Inspector General for Education.

20 (b) The Office is [an]:

21 **(1) AN independent unit of the State;**

22 **(2) A STATE EDUCATIONAL AUTHORITY UNDER THE FEDERAL**
23 **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT; AND**

24 **(3) THE STATE UNIT AUTHORIZED TO AUDIT OR EVALUATE**
25 **ELEMENTARY AND SECONDARY EDUCATION PROGRAMS AND SERVICES IN THE**
26 **STATE THAT RECEIVE FEDERAL OR STATE SUPPORT.**

27 (c) The purpose of the Office is to provide accountability and transparency in the
28 expenditure of public funds for education in the State.

29 (d) All expenses and operations related to the administration of the Office shall
30 be separately identified and independent of any other unit of State government.

1 9.10–103.

2 (a) There is an Inspector General in the Maryland Office of the Inspector General
3 for Education.

4 (b) (1) An individual is eligible to be the Inspector General only if the
5 individual executes an affidavit stating that the individual will not accept appointment to,
6 or be a candidate for, a State or local office:

7 (i) During the period of service as the Inspector General; and

8 (ii) For at least 3 years immediately after the individual last serves
9 as the Inspector General.

10 (2) The Inspector General shall renew the affidavit every 2 years during
11 the period of service.

12 (3) A failure to renew the affidavit under this subsection shall subject the
13 Inspector General to removal from office under this section.

14 (c) (1) The Inspector General shall be appointed unanimously by the
15 Governor, the Attorney General, and the State Treasurer, subject to the advice and consent
16 of the Senate.

17 (2) (I) The term of the Inspector General is 5 years, beginning July 1
18 after the appointment of the Inspector General.

19 (II) **THE INSPECTOR GENERAL MAY NOT SERVE MORE THAN**
20 **TWO FULL 5–YEAR TERMS.**

21 (3) At the end of a term, the Inspector General shall continue to serve until
22 a successor is appointed.

23 (4) If a vacancy occurs in the Office, an Interim Inspector General shall be
24 appointed as a successor to serve for the remainder of the unexpired term.

25 (d) (1) **[The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
26 **Inspector General may be removed unanimously by the Governor, the Attorney General,**
27 **and the State Treasurer for:**

28 [(1)] (I) Misconduct in office;

29 [(2)] (II) Persistent failure to perform the duties of the Office; or

30 [(3)] (III) Conduct prejudicial to the proper administration of justice.

1 **(2) (I) BEFORE REMOVING THE INSPECTOR GENERAL, THE**
2 **GOVERNOR, THE ATTORNEY GENERAL, AND THE STATE TREASURER SHALL**
3 **PROVIDE THE INSPECTOR GENERAL WITH WRITTEN NOTICE OF THE PROPOSED**
4 **REMOVAL.**

5 **(II) WITHIN 10 DAYS AFTER RECEIVING THE WRITTEN NOTICE**
6 **OF THE PROPOSED REMOVAL, THE INSPECTOR GENERAL MAY REQUEST AN**
7 **ADMINISTRATIVE HEARING.**

8 **(III) THE GOVERNOR, THE ATTORNEY GENERAL, AND THE**
9 **STATE TREASURER MAY DESIGNATE AN ASSISTANT ATTORNEY GENERAL TO SERVE**
10 **AS THE ADMINISTRATIVE HEARING OFFICER FOR A HEARING UNDER**
11 **SUBPARAGRAPH (II) OF THIS PARAGRAPH.**

12 (e) (1) Subject to paragraph (2) of this subsection, the Inspector General shall
13 be professionally qualified through experience or education in at least one of the following
14 areas:

- 15 (i) Law;
- 16 (ii) Auditing;
- 17 (iii) Government operations;
- 18 (iv) Financial management; or
- 19 (v) Education policy.

20 (2) If the Inspector General is professionally qualified in the area of
21 education policy, the Inspector General also shall be professionally qualified through
22 experience or education in at least one of the other areas listed in paragraph (1) of this
23 subsection.

24 (f) (1) The Inspector General is entitled to the salary provided in the State
25 budget.

26 (2) Funding for the Office shall be as provided in the State budget.

27 **(G) (1) THE INSPECTOR GENERAL MAY, AS PROVIDED IN THE STATE**
28 **BUDGET, APPOINT TERM MERIT EMPLOYEES, INCLUDING ONE OR MORE DEPUTY**
29 **INSPECTORS GENERAL.**

30 **(2) THE TERM OF A DEPUTY INSPECTOR GENERAL SHALL END WHEN**
31 **THE NEXT INSPECTOR GENERAL TAKES OFFICE, UNLESS THE INSPECTOR GENERAL**

1 SPECIFIES A SHORTER TERM WHEN APPOINTING THE DEPUTY INSPECTOR
2 GENERAL.

3 (3) THE INSPECTOR GENERAL MAY, AS PROVIDED IN THE STATE
4 BUDGET, RETAIN PROJECT STAFF OR OTHER CONSULTANTS BY CONTRACT.

5 (4) THE INSPECTOR GENERAL MAY, WITH THE AGREEMENT OF THE
6 HEAD OF ANY OTHER GOVERNMENT AGENCY OR COUNTY BOARD, TEMPORARILY
7 DETAIL AN EMPLOYEE OF THAT DEPARTMENT OR COUNTY BOARD TO THE OFFICE.

8 (5) THE INSPECTOR GENERAL MAY APPOINT AND EMPLOY
9 PROFESSIONAL AND CLERICAL STAFF, INCLUDING ATTORNEYS, ACCOUNTANTS,
10 AUDITORS, ANALYSTS, AND INVESTIGATORS, AS PROVIDED IN THE STATE BUDGET,
11 TO CONDUCT THE WORK OF THE OFFICE.

12 9.10–104.

13 (a) (1) Except as provided in paragraph (2) of this subsection, the Inspector
14 General [shall be responsible for examining and investigating the] MAY CONDUCT AN
15 INVESTIGATION, BUDGETARY ANALYSIS, AND FINANCIAL, MANAGEMENT, OR
16 PERFORMANCE AUDIT OR SIMILAR REVIEW OF THE matters listed in subsection (b) of
17 this section with respect to the management and affairs of the following entities:

18 (i) County boards, local school systems, and public schools;

19 (ii) Nonpublic schools that receive State funds;

20 (iii) The Department; and

21 (iv) The Interagency Commission on School Construction.

22 (2) The Inspector General may not examine or investigate a nonpublic
23 school that does not receive State funds.

24 (3) IN PERFORMING THE FUNCTIONS UNDER PARAGRAPH (1) OF THIS
25 SUBSECTION, THE INSPECTOR GENERAL MAY:

26 (I) SEEK ASSISTANCE FROM ANY OTHER GOVERNMENT
27 AGENCY OR PRIVATE PARTY; AND

28 (II) UNDERTAKE ANY PROJECT JOINTLY WITH ANY OTHER
29 GOVERNMENT AGENCY.

30 (b) The Inspector General may receive and investigate complaints or information
31 concerning:

1 (1) Instances of fraud, waste, or abuse involving the use of public funds and
2 property;

3 (2) Violations of civil rights, as defined in federal or State laws, of students
4 or employees of the entities listed in subsection (a) of this section;

5 (3) Whether policies and procedures governing the prevention and
6 reporting of child abuse and neglect comply with applicable federal and State laws on child
7 abuse and neglect; and

8 (4) Compliance with other applicable **POLICIES, PROCEDURES, AND**
9 federal and State laws.

10 (c) (1) The Inspector General may not disclose the identity of the source of a
11 complaint or information provided under subsection (b) of this section unless the Inspector
12 General:

13 (i) Obtains the written consent of the source; or

14 (ii) Determines that disclosure of the identity of the source is
15 necessary and unavoidable during the course of the investigation.

16 (2) If the Inspector General determines that disclosure of the identity of a
17 source is necessary and unavoidable, the Inspector General shall notify the source in
18 writing at least 7 days before disclosure.

19 (d) (1) Except as provided in paragraph (2) of this subsection, during an
20 investigation, **BUDGETARY ANALYSIS, OR FINANCIAL, MANAGEMENT, OR**
21 **PERFORMANCE AUDIT OR SIMILAR REVIEW** conducted in accordance with this title, the
22 Inspector General shall have access to all records, data, reports, contracts, correspondence,
23 or other documents of an entity listed under subsection (a) of this section that is the subject
24 of the investigation.

25 (2) The Inspector General may not access or compel the production of
26 documents that are:

27 (i) Protected under the attorney–client privilege; or

28 (ii) Confidential or privileged under applicable provisions of federal
29 or State law.

30 (e) (1) (i) During an investigation, **BUDGETARY ANALYSIS, OR**
31 **FINANCIAL, MANAGEMENT, OR PERFORMANCE AUDIT OR SIMILAR REVIEW** conducted
32 in accordance with this title, the Inspector General may:

33 1. Seek and obtain sworn testimony; and

1 concern to the State Superintendent, the State Board, the Interagency Commission on
2 School Construction, the Governor, and, in accordance with § 2-1257 of the State
3 Government Article, the General Assembly.

4 (j) The Inspector General may [appoint and employ professional and clerical
5 staff, including attorneys, accountants, auditors, analysts, and investigators, as
6 appropriated in the annual State budget, to conduct the work of the Office] **OBTAIN LEGAL
7 SERVICES FROM A PERSON OUTSIDE THE OFFICE OF THE ATTORNEY GENERAL, IF:**

8 **(1) THE INSPECTOR GENERAL FINDS THAT OBTAINING
9 INDEPENDENT LEGAL SERVICES IS NECESSARY TO EFFECTIVELY PERFORM THE
10 OFFICE'S DUTIES; AND**

11 **(2) THE DEPARTMENT OF BUDGET AND MANAGEMENT
12 APPROPRIATES SUFFICIENT FUNDS TO COVER THE COST OF THE LEGAL SERVICES.**

13 **(K) THE STATE SHALL PROVIDE THE INSPECTOR GENERAL WITH
14 APPROPRIATELY LOCATED OFFICE SPACE AND SUFFICIENT PHYSICAL FACILITIES,
15 INCLUDING NECESSARY OFFICE SUPPLIES, EQUIPMENT, AND FURNISHINGS TO
16 ENABLE THE OFFICE TO PERFORM ITS INDEPENDENT FUNCTIONS.**

17 9.10-105.

18 (a) On or before December 1 each year, the Office shall submit a report to the
19 State Superintendent, the State Board, the Interagency Commission on School
20 Construction, the Governor, and, in accordance with § 2-1257 of the State Government
21 Article, the General Assembly.

22 (b) The report shall include information on:

23 (1) The Office's goals and priorities for the upcoming year;

24 (2) The Office's activities during the preceding year;

25 (3) The number of incidents, in the aggregate, and a general summary of
26 the nature of the reported incidents, referred to the appropriate federal, State, or local law
27 enforcement authority, local State's Attorney's office, Office of the Attorney General, Office
28 of the State Prosecutor, or federal agency during the preceding year;

29 (4) Specific findings and recommendations relating to:

30 (i) Instances of fraud, waste, or abuse involving the use of public
31 funds and property;

32 (ii) Violations of the civil rights of students or employees;

1 (iii) Policies and procedures related to child abuse and neglect and
2 compliance with applicable federal and State laws; and

3 (iv) Compliance with other applicable federal and State laws; and

4 (5) Any regulatory or statutory changes necessary to ensure compliance
5 with applicable federal and State laws.

6 **9.10–106.**

7 **EACH UNIT OF GOVERNMENT OR COUNTY BOARD THAT RECEIVES STATE**
8 **EDUCATION FUNDS SHALL:**

9 **(1) KEEP POSTED IN CONSPICUOUS PLACES ON ITS PREMISES A**
10 **NOTICE PREPARED BY THE OFFICE SETTING FORTH THE METHODS FOR REPORTING**
11 **FRAUD, WASTE, AND ABUSE OF EDUCATION RESOURCES;**

12 **(2) KEEP POSTED IN CONSPICUOUS PLACES ON ITS WEBSITE A**
13 **DIRECT LINK TO THE OFFICE FOR REPORTING FRAUD, WASTE, AND ABUSE; AND**

14 **(3) ON REQUEST OF THE OFFICE, DISTRIBUTE INFORMATION**
15 **RELATED TO THE PREVENTION, DETECTION, AND REPORTING OF FRAUD, WASTE,**
16 **AND ABUSE OF EDUCATION RESOURCES TO THE STATE, COUNTY BOARD**
17 **EMPLOYEES, AND OTHER PERSONS OR ENTITIES RECEIVING STATE EDUCATION**
18 **FUNDS.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
20 1, 2024.