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R00A03

Funding for Educational Organizations

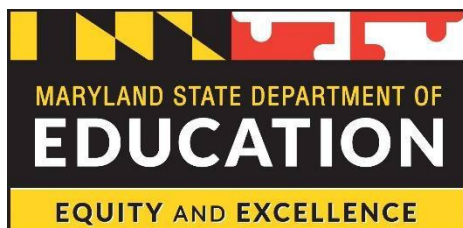
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Maryland State Department of Education

Response to the Analyst's Review and Recommendations

Senate Education, Business & Administration Subcommittee –  
February 25, 2022

House Education & Economic Development Subcommittee –  
March 3, 2022



Mohammed Choudhury  
State Superintendent of Schools

The Maryland State Department of Education (MSDE) welcomes this opportunity to share with the Committee some of its success stories and to address questions raised by the analyst.

### *Issues*

## **2. Governor Uses General Funds for New Non-Public Schools Nursing Program**

The fiscal 2023 allowance includes \$2.5 million in general funds to establish a new Non-Public Schools Nursing Program. According to the budget books, this program will provide grants to nonpublic schools statewide that need financial support to provide nursing services. No additional information on the program has been provided. As noted earlier in this document, MSDE has more than \$18.7 million of federal funds available to allocate to nonpublic schools in calendar 2022 to offset the impact of COVID-19 on school budgets. **DLS recommends cutting the expansion of assistance to non-public schools given the availability of significant federal funds to assist the schools.**

### **MSDE Response:**

MSDE respectfully disagrees.

### ***Operating Budget Recommended Actions***

1. Amend the following language to the special fund appropriation:

, provided that this appropriation shall be for the purchase of textbooks or computer hardware and software and other electronically delivered learning materials ~~as permitted under Title IID, Section 2316(b)(4), (6), and (7), of the No Child Left Behind Act~~ for loan to students in eligible nonpublic schools with a maximum distribution of \$65 per eligible nonpublic school student for participating schools, except that at schools where ~~at least 20%~~ from 20% to 40% of the students are eligible for the free or reduced-price lunch program there shall be a distribution of \$95 per student, and at schools where more than 40% of the students are eligible for the free or reduced-price lunch program there shall be a distribution of \$155 per student.

**Explanation:** This action amends language modifying the distribution of funding for the Aid to Non-Public Schools Program so that schools where more than 40% of the students are eligible for the free or reduced-price lunch program receive \$155 per student. Similar language has been included in the budget since fiscal 2017. It also strikes language regarding the No Child Left Behind Act due to technical differences with the reauthorized Elementary and Secondary Education Act.

### **MSDE Response:**

MSDE concurs.

2. Amend the following language to the special fund appropriation:

(2) Not charge more tuition to a participating student than the statewide average per pupil expenditure by the local education agencies, as calculated by the department, with appropriate exceptions for special education students as determined by the department; ~~and~~

(3) Comply with Title VI of the Civil Rights Act of 1964, as amended; and

(4) Submit its student handbook or other written policy related to student admissions to the Maryland State Department of Education for review to ensure compliance with program eligibility requirements.

**Explanation:** This action requires schools that participate in the Aid to Non-Public Schools Program to submit a student handbook or policy on student admissions to the Maryland State Department of Education to ensure compliance with program eligibility requirements.

**MSDE Response:**

MSDE respectfully disagrees. MSDE is concerned that the requirement for MSDE to receive and review handbooks will conflict with the recent federal district court ruling in Bethel Ministries, Inc. v. Salmon et al. SAG-19-1853 (Jan. 12, 2022). In the court's Opinion, the State violated Bethel's First Amendment speech rights by excluding Bethel from the BOOST program based only on the content of its admissions policy. There was no evidence that the nonpublic school actually discriminated against students. In that ruling, the Court stated: "This Court appreciates the Legislature's interest in ensuring that BOOST funding does not subsidize discrimination by participating schools. And the Court recognizes that Defendants have a very difficult task in carrying out that goal by enforcing the nondiscrimination provision, particularly as it applies to religious schools like Bethel with whose views the State may vehemently disagree. But the State acts at its own peril when it attempts to draw lines between acceptable speech and unacceptable speech on specific topics. Because that is what Defendants did here, they violated Bethel's First Amendment rights." For this reason, we request the handbook review requirement be deleted.

3. Add the following language:

Further provided that a nonpublic school participating in the Aid to Non-Public Schools Program R00A03.04 shall certify compliance with Title 20, Subtitle 6 of the State Government Article. 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. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will 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. Any school found to be in violation of the requirements to not discriminate shall be required to return to the Maryland State Department of Education all textbooks or computer hardware and software and other electronically delivered learning materials

acquired through the fiscal 2023 allocation. The only other legal remedy for violation of these provisions is ineligibility for participating in the Aid to Non-Public Schools Program. Any school that is found in violation of the nondiscrimination requirements in fiscal 2022 or 2023 may not participate in the program in fiscal 2023. It is the intent of the General Assembly that a school that violates the nondiscrimination requirements is ineligible to participate in the Aid to Non-Public Schools Program, the Broadening Options and Opportunities for Students Today Program, the James E. “Ed” DeGrange Nonpublic Aging Schools Program, and the Nonpublic School Security Improvements Program in the year of the violation and the following two years.

**Explanation:** This action requires a nonpublic school participating in the Aid to Non-Public Schools Program to certify compliance with Title 20, Subtitle 6 of the State Government Article (Discrimination in Employment). It also specifies that a participating school may not discriminate in student admissions on the basis of race, color, national origin, sexual orientation, or gender identity or expression. Violation of these provisions means that a school will be ineligible for the program. Similar language has been included in the budget since fiscal 2017. This action also specifies that schools that violate the provisions must return all textbooks and technology received through the program to the Maryland State Department of Education. It also states that a school that violates the nondiscrimination requirements in fiscal 2022 or 2023 is not eligible to participate in the program in fiscal 2023 and states legislative intent that any school that violates the nondiscrimination requirements is ineligible to participate in any program that provides funding to nonpublic schools for a total of three years.

**MSDE Response:**

MSDE concurs.

4. Amend the following language:

- (a) ~~participate~~ have participated in Program R00A03.04 Aid to Non-Public Schools Program for textbooks and computer hardware and software administered by MSDE; during the 2021-2022 school year;

**Explanation:** This language specifies that to participate in the Broadening Options and Opportunities for Students Today (BOOST) Program during the 2022-2023 school year, a nonpublic school must have already participated in the Aid to Non-Public Schools Program during the 2021-2022 school year. This language eliminates ambiguity for the Maryland State Department of Education, specifying that nonpublic schools are eligible for BOOST for the 2022-2023 school year by participating in the Aid to Non-Public Schools Program in the previous school year.

**MSDE Response:**

MSDE concurs.

5. Amend the following language:

- c) ~~administer assessments to all students in accordance with federal and State law; and administer national, norm-referenced standardized assessments chosen from the list of assessments published by the U.S. Department of Education to qualify nonpublic schools for the National Blue Ribbon Schools Program. The nonpublic schools must administer the assessments to all students as follows:~~
    - i. English/language arts and mathematics assessments each year for students in grades 3 through 8, and at least once for students in grades 9 through 12; and
    - ii. a science assessment at least once for students in grades 3 through 5, at least once for students in grades 6 through 9, and at least once for students in grades 10 through 12; and
  - d) comply with Title VI of the Civil Rights Act of 1964 as amended, Title 20, Subtitle 6 of the State Government Article, and not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, ~~or~~ sexual orientation, or gender identity or expression. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student based on race, color, national origin, ~~or~~ sexual orientation, or gender identity or expression. If a nonpublic school does not comply with these requirements, it shall reimburse MSDE all scholarship funds received under the BOOST Program for the 2022-2023 school year and may not charge the student tuition and fees instead. The only other legal remedy for violation of this provision is ineligibility for participating in the BOOST Program.
- (2) MSDE shall establish procedures for the application and award process for scholarships for students who are eligible for the free or reduced-price lunch program. The procedures shall include consideration for award adjustments if an eligible student becomes ineligible during the course of the school year.
  - (3) MSDE shall compile and certify a list of applicants that ranks eligible students by family income expressed as a percent of the most recent federal poverty levels.
  - (4) MSDE shall submit the ranked list of applicants to the BOOST Advisory Board.
  - (5) There is a BOOST Advisory Board that shall be appointed as follows: 2 members appointed by the Governor, 2 members appointed by the President of the Senate, 2 members appointed by the Speaker of the House of Delegates, and 1 member jointly appointed by the President and the Speaker to serve as the chair. A member of the BOOST Advisory Board may not be an elected official and may not have any financial interest in an eligible nonpublic school.

- (6) The BOOST Advisory Board shall review and certify the ranked list of applicants and shall determine the scholarship award amounts. The BOOST Advisory Board shall take into account the special needs of students with disabilities when determining scholarship award amounts.
- (7) MSDE shall make scholarship awards to eligible students as determined by the BOOST Advisory Board.
- (8) ~~The~~ Unless the student has special needs due to a disability, the amount of a scholarship award may not exceed the lesser of:
  - a. the statewide average per pupil expenditure by local education agencies, as calculated by MSDE; or
  - b. the tuition of the nonpublic school.
- (9) In order to meet its BOOST Program reporting requirements to the budget committees, MSDE shall specify a date by which participating nonpublic schools must submit information to MSDE so that it may complete its required report. Any nonpublic schools that do not provide the necessary information by that specified date shall be ineligible to participate in the BOOST Program.
- (10) Students who received a BOOST Program scholarship award in the prior year who still meet eligibility criteria for a scholarship shall receive a scholarship renewal award. For students who are receiving a BOOST Program scholarship for the first time, priority shall be given to students who attended public schools in the prior school year.

Further provided that the BOOST Advisory Board shall make all scholarship awards no later than December 15, 2022, for the 2022-2023 school year to eligible individuals. Any unexpended funds not awarded to students for scholarships shall be encumbered at the end of fiscal 2023 and available for scholarships in the 2023-2024 school year.

Further provided that \$700,000 of this appropriation shall be used only to provide an additional award for each student with special needs that is at least equal in amount to the BOOST Program scholarship award that student is awarded in accordance with paragraph (6) above.

Further provided that MSDE shall submit a report to the budget committees by January 15, 2023, that includes the following:

- (1) the number of students receiving BOOST Program scholarships;
- (2) the amount of the BOOST Program scholarships received;
- (3) the number of certified and noncertified teachers in core subject areas for each nonpublic school participating in the BOOST Program;

- (4) the assessments being administered by nonpublic schools participating in the BOOST Program and the results of these assessments. MSDE shall report the assessment results reported by nonpublic schools to the budget committees in an aggregate manner that does not violate student data privacy;
- (5) in the aggregate, for each BOOST Program scholarship awarded (a) the nonpublic school and grade level attended by the student; (b) the school attended in the 2021-2022 school year by the student; and (c) if the student attended the same nonpublic school in the 2021-2022 school year, whether, what type, and how much nonpublic scholarship aid the student received in the 2021-2022 school year and will receive in the 2022-2023 school year;
- (6) the average household income of students receiving BOOST Program scholarships;
- (7) the racial breakdown of students receiving BOOST Program scholarships;
- (8) the number of students designated as English language learners receiving BOOST Program scholarships;
- (9) the number of special education students receiving BOOST Program scholarships;
- (10) the county in which students receiving BOOST Program scholarships reside;
- (11) the number of students who were offered BOOST Program scholarships but declined them as well as their reasons for declining the scholarships and the breakdown of students attending public and nonpublic schools for students who declined scholarships;
- (12) the number of students who received BOOST Program scholarships for the 2021-2022 school year who are attending public school for the 2022-2023 school year as well as their reasons for returning to public schools; and
- (13) the number of students who received BOOST Program scholarships for the 2021-2022 school year who withdrew or were expelled from the nonpublic schools they were attending and the reasons for which they withdrew or were expelled; the schools they withdrew or were expelled from; and the length of time students receiving BOOST Program scholarships were enrolled at a nonpublic school before withdrawing or being expelled.

**Explanation:** This language specifies priorities for BOOST scholarship awards and makes nonpublic schools that do not provide required information to MSDE by a certain date ineligible for participating in the BOOST Program. The language also provides that for the 2022-2023 school year, the BOOST Advisory Board shall make all scholarship awards no later than December 31, 2022, and any unexpended funds not awarded to

students shall be encumbered for scholarships in the next year. This language also requires MSDE to report by January 15, 2023, on the distribution of the BOOST scholarships; information on the students receiving BOOST scholarships; teacher certifications for nonpublic schools participating in the BOOST Program; and assessments being administered in nonpublic schools participating in the BOOST Program, including student performance. The language also requires that MSDE report on students who choose to decline scholarships or attend public schools after participating in the BOOST Program in the past, along with their reasons for doing so, and information on students receiving scholarships for the 2021-2022 school year who withdrew or were expelled from the nonpublic schools that they were attending. Finally, the language requires that the BOOST Advisory Board shall take into account the special needs of students with disabilities as it is determining scholarship award amounts and that \$700,000 of the BOOST appropriation shall be used to provide higher awards for these students.

<b>Information Request</b>	<b>Author</b>	<b>Due Date</b>
BOOST Program Participation	MSDE	January 15, 2023

**MSDE Response:**  
MSDE concurs.

	<u>Amount Reduction</u>	<u>Position Reduction</u>
6. Delete general fund appropriation for the Non-Public School Nursing Program due to the availability of significant federal funds to assist non-public schools	\$2,500,000	GF

**MSDE Response:**  
MSDE respectfully disagrees.

7. Adopt the following narrative:

**Report on the Governor’s Emergency Education Relief II Funding for Nonpublic Schools:** In January 2021, the Governor announced \$35.8 million for Maryland nonpublic schools as part of the Coronavirus Response and Relief Supplemental Appropriation Act, Governor’s Emergency Education Relief (GEER) II Fund. In calendar 2021, the Maryland State Department of Education (MSDE) reported that the agency continues to distribute funds for this program. The budget committees request that on September 1, 2022, MSDE report on allocations and expenditures of the nonpublic schools GEER II grant. This report should include:

- amount awarded to each nonpublic school in all distributions round;
- aggregate expenditures for fiscal 2021 and 2022 on specific safe reopening needs by type, including but not limited to air quality monitoring or air purification devices,



personal protective equipment, health room equipment or supplies, social distancing, transportation, and personnel;

- administrative expenses by object; and
- amount of funds remaining, the intended use of remaining funds, and/or amount of canceled funds.

**Information Request**

Report on GEER II funding  
for Nonpublic Schools

**Author**

MSDE

**Due Date**

September 1, 2022

**MSDE Response:**

MSDE concurs.