
R00A03

Funding for Educational Organizations

Maryland State Department of Education

Response to the Analyst's Review and Recommendations

House Education & Economic Development Subcommittee –
February 29, 2024

Senate Education, Business & Administration Subcommittee –
March 4, 2024



Dr. Carey Wright
Interim 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.

Fiscal 2024

Implementation of Legislative Priorities

Aid to Non-Public Schools Program

In fiscal 2024, the Aid to Non-Public Schools Program received a total appropriation of \$12.0 million, which included \$6.0 million in special funds from the Cigarette Restitution Fund (CRF), which is the annual appropriation for this program; \$3.5 million in federal stimulus funds in Supplemental Budget No. 2 added to the fiscal 2024 Budget Bill for COVID-19-related expenditures; and \$2.5 million in CRF funds added in Section 19 for grants for school nurses, other health services, and school security. Eligibility was limited to nonpublic schools that participated in the BOOST program in fiscal 2023.

MSDE administered the special fund grant of \$2.5 million as the Nonpublic Health and School Security Program, which had 171 eligible BOOST schools. As of December 2023, 142 schools requested a total of \$2.1 million, of which half has been distributed. **Exhibit 5** shows Nonpublic Health and School Security Program expenditures to date. Out of \$1.0 million, \$466,000, or 44%, has been allocated for school nurses; \$387,000, or 37%, has been allocated for school security; and \$197,000, or 19%, has been allocated for other health professionals. The grant application window has closed, though there are approximately \$400,000 in unallocated funds remaining. 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.

MSDE should comment on the reason that nonpublic schools have not utilized all grant funds and whether unallocated funds are likely to be used in fiscal 2024 as part of grants for the Aid to Non-Public Schools Program.

MSDE Response:

The application for the \$2.5 million in CRF funds for grants for school nurses, other health services, and school security was released on August 1, 2023. School allocations were determined by combining a universal base award plus an additional amount based on the school's reported total student enrollment. Eligible schools were required to express interest in participating no later than September 15, 2023. MSDE sent out several emails to eligible schools and advertised the program on a public-facing webpage. Out of the 171 eligible schools, 142 opted in to participate and 29 schools were not responsive. The schools that opted in to participate were required to let MSDE know whether they intended to expend all or a portion of their funding allocation. Of those 142 schools, 14 schools expressed that they did not intend on using their entire allocation. At the conclusion of the application and obligation period, \$2.1 million in funding was obligated. The remaining funds in the amount of \$406,000 were rolled over to eligible schools for the Nonpublic Textbook program. Those funds are currently being spent down.

The application for the \$3.5 million in federal stimulus funds will be released on March 7, 2024, and eligible schools must opt in to participate by March 21, 2024. Only schools who were approved to participate in the Nonpublic Textbook Program during fiscal year 2024 are eligible for these funds. The list of approved schools was finalized in January 2024, following the conclusion of the application process for the Nonpublic Textbook Program. School allocations will not be determined until the final list of schools who express interest in participating is captured. Funds will be disbursed beginning at the end of March 2024.

The Department of Legislative Services (DLS) recommends that language from Chapter 101 be restored for the BOOST Program and for the Aid to Non-Public Schools Program. MSDE should comment on:

- **why special education awards did not meet the \$700,000 legislative directive;**
- **why high school students earned an additional award when that was not a program requirement for the 2023-2024 school year; and**
- **the efforts of BOOST schools to close the gap between BOOST and non-BOOST students on standardized assessments.**

MSDE Response:

The BOOST Board provided all eligible special education students with an additional \$750 over and above their special education adjustment which is equal to the base award amount. Even with this additional allocation, there were not enough students who qualified for special education services to utilize the entire \$700,000 amount.

The BOOST Board determined that the additional cost of high school tuition warranted additional adjustment for high school students. In the 2023-2024 school year, the amount is \$3,000.

The Department collects assessment data from BOOST participating schools as is required by the General Assembly. The Department does not require participating schools to close the gap between BOOST and Non-BOOST student performance. The majority of participating schools are eligible as church-exempt schools and are only required to provide healthy and safety inspection data to the Department.

Operating Budget Recommended Actions

1. Amend the following language on 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 23-16(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 2024 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 2024 or 2025 may not participate in the program in fiscal 2025. 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 2024 or 2025 is not eligible to participate in the program in fiscal 2025 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. Add the following language to the special fund appropriation:

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 a student is awarded in accordance with paragraph (6) above.

Further provided that MSDE shall submit a report to the budget committees by January 15, 2025, 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 2023-2024 school year by the student; and (c) if the student attended the same nonpublic school in the 2023-2024 school year, whether, what type, and how much nonpublic scholarship aid the student received in the 2023-2024 school year and will receive in the 2024-2025 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 2023-2024 school year who are attending public school for the 2024-2025 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 2023-2024 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 requires MSDE to report by January 15, 2025, 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 2023-2024 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.

Information Request	Author	Due Date
BOOST Program Participation	MSDE	January 15, 2025

MSDE Response:
MSDE concurs.