



Legislative Committee Meeting

Monday, March 20, 2017

10:00 a.m. – Noon

MABE Conference Room

Stacy KorbelaK, Legislative Committee Chair
 Warner Sumpter, Legislative Committee Vice Chair

Agenda

1.	Welcome and Introductions	Information	Stacy KorbelaK	
2.	Reports from Board Members	Information & Discussion	Stacy KorbelaK/ All	20 min.
3.	Priority Bills: Status & Highlights	Information & Discussion	John Woolums/ All	60 min.
4.	State Budget Update	Information & Discussion	John Woolums/ All	10 min.
5.	All Education Bills: Status & Highlights	Information & Discussion	John Woolums/ All	30 min.
6.	Calendar	Information	Stacy KorbelaK	
7.	Adjournment	Closing Remarks	Stacy KorbelaK	

* Meeting Materials on Reverse

Materials & Resources for March 20, 2017 Meeting

Legislative Committee Calendar

March 20, 2017; April 3, 2017; and May 1, 2017.

Agenda Item Materials

Item 3. Priority Bills: Status & Highlights

[HB 461/SB 452](#) – Education - Accountability Program - Assessments (Less Testing, More Learning Act of 2017) (Del. Luedtke/Sen. Manno) (Oppose)

[HB 978/SB 871](#) – Education - Accountability - Consolidated State Plan and Support and Improvement Plans (Protect Our Schools Act of 2017) (Del. Luedtke/Sen. Zucker) (Support with Amendments)

[HB 1240](#) – Individualized Education Programs - Burden of Proof in Due Process Hearings and Studies (Del. Kaiser) (Oppose)

[HB 174/SB 710](#) – Education - Children with Disabilities - Individualized Education Program Process - Parental Consent (Del. Luedtke/Sen. Conway) (Oppose)

[HB 331/SB 786](#) – Education - Behavior Intervention Plans - Physical Restraint and Seclusion (Del. Luedtke/Sen. Zucker) (Oppose)

[HB 425/SB 651](#) – Public Schools - Suspensions and Expulsions (Del. Lierman/Sen. Smith) (Support with Amendments)

[HB 616/SB 232](#) – Education - Pregnant and Parenting Students - Attendance Policy (Del. Atterbeary/Sen. Manno) (Support with Amendments)

[HB 497/SB 760](#) – Education - Grounds for Discipline (Del. A. Washington/Sen. Guzzone) (Oppose)

[HB1145](#) – Public School Employee Whistleblower Protection Act (Del. Tarlau) (Oppose)

[HB 270](#) – Environment - Testing for Lead in Drinking Water - Public and Nonpublic Schools (Del. Lafferty) (Oppose)

[SB 1060/HB 1082](#) – Heroin and Opioid Education and Community Action Act of 2017 (Start Talking Maryland Act) (Sen. Miller/Del. Bromwell) (Support with Amendments)

Item 4. State Budget Update

[HB 150/SB 170](#) – The State Budget Bill (Support with Amendments)

[HB 152/SB 172](#) – The Budget Reconciliation and Financing Act (BRFA) (Support with Amendments)

[SB 1001/HB 1109](#) – Teachers' Retirement and Pension Systems - County Boards of Education Payments (Sen. Guzzone/Del. B. Barnes) (Support)

[HB 151/SB 171](#) – The State Capital Budget Bill (Support with Amendments)

Item 5. All Education Bills: Status & Highlights

(Link to MABE Bill Tracking Report)

Item 3. Priority Bills: Status & Highlights

HB 461/SB 452 – Education - Accountability Program - Assessments (Less Testing, More Learning Act of 2017) (Del. Luedtke/Sen. Manno)

The Senate has passed SB 452, as described below. This bill as amended requires that on or before August 1, 2017, and each August 1 thereafter in an odd-numbered year, a county board and the exclusive employee representative for that local school system shall meet and confer regarding: (1) a rubric for evaluating local assessments; (2) the time required to administer each local assessment; and (3) the purpose of each local assessment.

Also as amended, at the high school level, when the MSDE's contract for the current high school social studies assessment expires, the State Board shall, in collaboration with county boards, county curriculum specialists in social studies, high school social studies teachers, and academics with expertise in social studies education, redesign the high school level social studies assessment to: (1) consist to the greatest extent possible, of criterion-referenced, performance-based tasks that require students to utilize critical and historical thinking skills and analyze primary sources; (2) be administered, to the greatest extent possible, within existing class periods; and (3) be implemented in the 2018-2019 school year, and each year thereafter.

As amended, each local board of education may establish a District Committee on Assessments to assist and facilitate the requirements that includes administrators, teachers and parents. On or before December 1, 2017, and each December 1 thereafter in an odd-numbered year, a county board and the exclusive employee representative for that local school system shall mutually agree to the amount of time in the aggregate that shall be devoted to federal state, or locally mandated assessments, on a grade-by-grade basis, for the following year. If a county board and the exclusive employee representative fail to mutually agree, the amount of time in the aggregate that shall be devoted to federal, state, or locally mandated assessments shall be no more than 2.2% of the minimum required annual instructional hours. A student may not be subject to these requirements if the student participates in: (1) an advanced placement or International Baccalaureate Program; or the Scholastic Aptitude Test (SAT), if administered during the regular school day.

The Maryland State Department of Education (MSDE) shall define a rubric by which a county board of education or a District Committee on Assessments shall evaluate local assessments. The bill would take effect June 1, 2017.

HB 461 awaits action in the Senate Education, Health and Environmental Affairs Committee after passing the House with different amendments. The House version includes more of the original provisions of the bill as introduced, including a mandatory statewide cap of 2 percent on federal, state and locally mandated assessments, and mandatory District Committees on Assessment.

HB 978/SB 871 – Education - Accountability - Consolidated State Plan and Support and Improvement Plans (Protect Our Schools Act of 2017) (Del. Luedtke/Sen. Zucker)

On March 10, 2017, the House passed by a vote of 91-46 legislation to require that the State's consolidated state plan to improve student outcomes, which the Maryland State Department of Education (MSDE) must submit to the U.S. Department of Education (ED) under the federal Every Student Succeeds Act (ESSA), comply with the requirements detailed in the bill. The bill specifies parameters for school quality indicators, comprehensive support and improvement plans, and targeted support and improvement plans, and prohibits specified interventions.

SB 871 as amended is expected to be reported out of the Senate Education, Health and Environmental Affairs Committee early this coming week as amended (although subject to change until vote is finalized).

The *Education - Accountability - Consolidated State Plan and Support and Improvement Plans (Protect Our Schools Act of 2017)* (HB 978/SB 871) has two main sections: one that balances test scores with “opportunity” indicators—like class size, access to a well-rounded curriculum, and attendance rates—in measuring school success, and the other prevents the state from privatizing low-performing schools.

As amended by the House, the legislation:

- Reserves 45% of the school accountability score to non-testing “opportunity” indicators—like class size, school climate, chronic absenteeism, access to arts education, and other *suggested* metrics (the bill does not mandate which indicators are used); this means the other 55% is based on testing-based academic indicators
- Requires that at least three opportunity indicators are used in measuring school success in the accountability system
- Directs the Maryland State Department of Education to allocate federal funding for school support and improvement based on a need-based formula
- Protects local autonomy in school improvement plans for three years; if a low-performing school does not improve after that amount of time, the state must step in to develop new improvement strategies
- Prohibits that state from using privatization interventions in turnaround plans, including: creating a state-run or new school district, converting a public school to a charter school, issuing private schools vouchers in any form, and hiring a for-profit management company

On March 16 and 17, the Senate Education, Health and Environmental Affairs Education Subcommittee began their work on the House-approved legislation. Mary Gable, MSDE provided a presentation comparing both bills with the ESSA. Also in attendance were State Board President Andrew Smarick and Vice President Chester Finn, as well as, State Superintendent Karen Salmon. After lengthy discussion various changes were made to the legislation regarding school quality indicators, in that an educational accountability program shall include at least three school quality indicators that measure the comparative opportunities provided to students in public schools. School quality indicators must include: (1) school climate surveys, and (2) an every-school calculation, developed by MSDE that assesses the quality and completion of teacher/principal observations and evaluations. No more than two other school quality indicators may be selected by the State Board from the following list:

- (1) On track 9th graders;
- (2) Class size,
- (3) Case load,
- (4) Opportunities for Advanced Placement courses and International Baccalaureate Programs;
- (5) Career and Technology Education Programs;
- (6) Chronic Absenteeism;
- (7) Data on discipline and restorative practices;

(8) Access to teachers who hold an advanced professional certificate or have obtained National Board Certification.

(9) access to well-rounded curriculum, including math, English Language, arts, science, social studies, and related arts.

The combined total of the academic indicators may not exceed 55% of the composite score.

Minimum Weighting of Indicators – No academic or school quality indicator shall be weighted at less than 10% of the composite score, the final weights of the academic indicators and school quality indicators shall be determined by the State Board with stakeholder input.

Numeric Reporting of Composite Score – Composite score reporting of all indicators shall be numeric percentile and not a letter grade system.

Allowance for Longer School Year – Allow a comprehensive support plan to include lengthening of the school year.

Discussions did center on language to limit approval for comprehensive support plans to just the county board and the State Department, taking out “school” but was advised by MSDE that the “school” language is in the ESSA.

Baltimore City Public Schools Amendment was accepted to provide that the calculation of academic and school quality indicators shall incorporate a methodology that compares schools that share similar demographic characteristics, including at a minimum the proportion of economically disadvantaged students, as defined by the State of Maryland in accordance with the Every Student Succeeds Act.

HB 1240 – Individualized Education Programs - Burden of Proof in Due Process Hearings and Studies (Del. Kaiser) (Oppose)

As amended, this bill specifies which party has the burden of proof under specified circumstances, in a due process hearing held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. The complaining party shall have the burden of proof in a due process proceeding. A public agency shall have the burden of proof in a due process proceeding if a parent or guardian files a due process complaint against a public agency concerning: (1) a dispute over the delivery of services under the child’s existing IEP; or (2) a dispute over proposed changes to the child’s existing IEP at the annual review meeting. The Maryland State Department of Education (MSDE), in consultation with each local school system, shall: (1) review and assess the current population density of special education teachers in each local school system and in geographical regions in the State. On or before July 1 2018, MSDE, in consultation with the Department of Budget and Management and the Department of Legislative Services, shall contract with a public or private entity to conduct an independent study of the IEP process in the State, including the procedures relating to the identification, evaluation, and educational placement of a child, the provision of a free and appropriate education, and the dispute resolution procedures and make recommendations. On or before July 1, 2019, MSDE shall report the findings and recommendations of the study.

HB 174/SB 710 – Education - Children with Disabilities - Individualized Education Program Process - Parental Consent (Del. Luedtke/Sen. Conway) (Oppose)

HB 174, as amended and passed by the House, requires the individualized education program (IEP) team to obtain written consent from a parent if the team proposes to (1) enroll the child in an alternative education program that does not issue or provide credits toward a high school diploma; (2) identify the child for the alternate assessment aligned with the State’s alternate curriculum; or (3) include restraint or seclusion in the IEP to address the child’s behavior, or (4) initiate a change in the child’s educational placement. If the parent does not provide written consent, the IEP team must send the parent written notice within five business days of the IEP meeting that (1) the parent has the right to either consent, or refuse to consent, to an action described above, and (2) if the parent does not provide written consent or refusal to consent within 15 business days of the IEP team meeting, the IEP team may implement the proposed action. If a parent refuses to consent to the proposed action, the IEP team may use the dispute resolution process to resolve the matter. The bill takes effect July 1, 2017.

HB 331/SB 786 – Education - Behavior Intervention Plans - Physical Restraint and Seclusion (Del. Luedtke/Sen. Zucker) (Oppose)

As introduced, this legislation would prohibit the use of physical restraint and seclusion in disciplining a public or nonpublic school student except under specified conditions, including a new requirement for a risk assessment by a licensed professional prior to the use of seclusion. The bill adds trauma-informed interventions to the definition of behavioral intervention plans and requires the Maryland State Department of Education (MSDE) to make sufficient behavior intervention training available and coordinate with public and nonpublic schools to ensure that all school personnel who directly work with students on a daily or routine basis receive specified professional development training.

MABE opposes this bill, but also recommended the consideration of a statutory standard that reflects longstanding regulations developed through a legislative task force. The regulations provide a general prohibition on the use of restraint and seclusion, with exceptions.

Under Maryland regulations, the use of physical restraint and seclusion is prohibited in public and nonpublic schools, unless: (i) There is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate; (ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or (iii) The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

SB 786 is in the process of being amended to update the statutory definition of and terms for the use of restraint to align with current regulations. The bill would apply the bill's original language regarding seclusion to nonpublic schools; and create a task force to recommend updates for the statute and regulations regarding the use of seclusion in public schools. These amendments have not been finalized and will be the subject of voting in the Senate Education Committee in the coming week.

HB 425/SB 651 – Public Schools - Suspensions and Expulsions (Del. Lierman/Sen. Smith) (Support with Amendments)

As amended, HB 425, provides that a student enrolled in kindergarten first grade, or second grade may not be suspended or expelled from school. A student may only be suspended or expelled from school if required by federal law; or suspended for no more than 9 school days if the school administration in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports. The principal or school administration shall promptly contact the parent or guardian of a student suspended or expelled. The school shall provide intervention and support to address the student's behavior if the student is: (1) suspended; or (2) enrolled in prekindergarten, kindergarten, first grade, or second grade, and is disruptive to the school environment; or commits an act that would be considered an offense subject to suspension but for the student's grade. Intervention and support provided includes: positive behavior interventions and supports; a behavior intervention plan; a referral to a student support team; a referral to an IEP Team; and a referral for appropriate community-based services. The school system shall remedy the impact of a student's behavior through appropriate intervention methods that may include restorative practices. On or before May 1, 2018, the Department (MSDE) shall adopt regulations to carry out the requirements. The bill takes effect July 1, 2017.

The cross-filed bill (SB 651) received a Favorable with Amendments Report by Education, Health, and Environmental Affairs.

HB 616/SB 232 – Education - Pregnant and Parenting Students - Attendance Policy (Del. Atterbeary/Sen. Manno) (Support with Amendments)

MABE supports this legislation, in so far as it would reasonably require that each school board adopt a policy governing the attendance of pregnant and parenting students. The amendment requested by MABE would retain the policy mandate but remove the prescriptive policy components stipulated in the bill. The Senate adopted this amendment; the House is adopted the bill largely as introduced, which includes the following provisions.

The local board of education attendance policy must excuse all absences due to pregnancy- or parenting-related conditions, including absences for labor, delivery, recovery, and prenatal and postnatal medical appointments. The policy must also:

- excuse pregnancy-related absences that are deemed medically necessary by the student’s physician;
- provide at least 10 days of excused absences for a parenting student after the birth of the student’s child;
- excuse parenting-related absences due to an illness or a medical appointment of the student’s child, including up to four days of absences per school year for which the school may not require a note from a physician; and
- excuse any absence due to a legal appointment involving the pregnant or parenting student that is related to family law proceedings, including adoption, custody, and visitation.

MABE continues to support the Senate version of this legislation.

HB 497/SB 760 – Education - Grounds for Discipline (Del. A. Washington/Sen. Guzzone) (Oppose)

As introduced, this bill alters the procedures for suspending or dismissing a teacher, principal, supervisor, assistant superintendent, or other professional assistant by authorizing such an individual to request a hearing before an arbitrator instead of the local board of education. The bill specifies the procedures for such an arbitration. Except as otherwise specified, the local board of education must pay the full cost and expenses of the arbitration including specified costs. However, the local superintendent and the individual must pay their own respective costs and expenses associated with any witness or evidence produced by them. An arbitrator must be selected as specified. The award by the arbitrator is final and binding; however, an individual may request judicial review by a circuit court, which must be governed by the Maryland Uniform Arbitration Act. The bill received a Favorable with Amendments Report by Education, Health, and Environmental Affairs Committee. The amendments provide that in cases in which the employee is the losing party, the employee is responsible for a portion of the costs of arbitration. The House cross-file (HB 497) remains in the House Ways and Means Committee.

HB1145 – Public School Employee Whistleblower Protection Act (Del. Tarlau) (Oppose)

This bill prohibits a public school employer from taking, or refusing to take, any personnel action as reprisal against a public school employee because the employee discloses or threatens to disclose unlawful behavior; provides information or testifies for an investigation of unlawful behavior; or objects to or refuses to participate in unlawful behavior. The protection only applies if (1) the public school employee has a good faith belief that the employer is still engaged in unlawful activity; (2) the employee discloses specified information that the employee believes evidences an abuse of authority, a danger to public health or safety, or a violation of law; and (3) the public school employee has reported the behavior in writing to a supervisor or administrator and afforded the employer a reasonable opportunity to correct the activity. As amended, a public school employee shall exhaust any administrative remedies before instituting a civil action.

HB 270 – Environment - Testing for Lead in Drinking Water - Public and Nonpublic Schools (Del. Lafferty) (Oppose)

As introduced, this bill would require the Maryland Department of the Environment (MDE), in consultation with MSDE, to adopt regulations by October 1, 2017, to require periodic testing for the presence of lead in each “drinking water outlet” located in an occupied public or nonpublic school building. The regulations must require initial testing to be conducted by January 1, 2018, and establish specific follow-up actions for positive test results. The bill does allow for waivers from the required testing based on specified conditions. MABE opposes this bill based on the testing already required and/or being conducted and the appropriate responses being taken to ensure that all school children have access to clean, safe drinking water. The fiscal note finds that under this bill “local expenditures increase, potentially significantly, to the extent that public schools are responsible for paying for the required sampling and testing. Additionally, costs likely increase for any public schools that test positive for an elevated level of lead to conduct required follow-up actions.”

This bill was the subject of work sessions led by the bill sponsor with the participation of environmental advocacy organizations. MABE participated in these discussions toward the goal of addressing the testing, remediation, and significant cost issues raised by this legislation.

HB 270 was reported favorably by the House Environment and Transportation Committee with amendments. The amendments provide that the testing is to be conducted in accordance with regulations developed by the Maryland Department of Environment in consultation with MSDE and other agencies; and the creation of a stakeholder group to develop the regulations. The amended bill provides for expanded waivers from testing for schools in which students do not have access to drinking water outlets; bottled water is the only source of drinking water; or a plan is already in place for testing that complies with the regulations. The bill also provides for a phase in of testing requirements for schools constructed before 1988, and school buildings serving students in a prekindergarten program or any grade from kindergarten through grade 5.

There is no Senate cross-file of this legislation, so following House passage the bill will be assigned to the Senate Education, Health and Environmental Affairs Committee.

Item 4. State Budget Update

HB 150/SB 170 – The State Budget Bill (Support with Amendments)

HB 152/SB 172 – The Budget Reconciliation and Financing Act (BRFA) (Support with Amendments)

HB 151/SB 171 – The State Capital Budget Bill (Support with Amendments)

SB 1001/HB 1109 – Teachers' Retirement and Pension Systems - County Boards of Education Payments (Sen. Guzzone/Del. B. Barnes) (Support)

This bill relieves county boards of education, including the Baltimore City Board of School Commissioners, from their fiscal 2017 obligation to pay \$19,695,182 of their share of the employer normal cost for their employees who are members of the Teachers' Retirement System (TRS) or Teachers' Pension System (TPS). If the Governor does not transfer funds totaling that amount restricted in either the fiscal 2018, or 2019 budget as a deficiency appropriation for State Retirement Agency (SRA) administrative fees to instead cover the foregone contributions by county school boards, the Governor must provide an equal amount in fiscal 2018 for that purpose. The bill takes effect June 1, 2017. <http://mgaleg.maryland.gov/2017RS/bills/sb/sb1001t.pdf> . The cross-filed bill HB 1109 has passed the House with same amendments. <http://mgaleg.maryland.gov/2017RS/bills/hb/hb1109t.pdf>