

March 21, 2023

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Legislative Committee Meeting

MABE's Legislative Committee met on Monday, March 13 to review the bill status of bills on which MABE is taking positions and to receive budget updates. The Committee meets next on March 27th. The [Legislative Committee](#) is led by Karen Yoho, Chair, and Brenda Wolff, Vice Chair, and includes representatives from all 24 boards of education. The committee guides the association's lobbying activities in Annapolis, and invites policy and legislative leaders as guest speakers to exchange ideas. During the legislative session, MABE's bill testimony reflects the association's [resolutions](#) as annually updated and adopted by the full membership, and legislative priorities and positions as adopted by the Legislative Committee. MABE's top priorities for the 2023 Legislative Session include:

- Support for governance authority for local boards of education to adopt education policies and school system budgets reflecting local priorities and resources.
- Support for full State funding for Maryland's outstanding public schools.
- Support for increased State funding for school construction and renovation projects.
- Support for sustained and increased local government investments in education.

MABE's [Legislative Positions & Priorities for the 2023 Session](#) include additional information on these priorities and position statements on other major policy areas.

Bill Cross-Over Deadline

MABE is currently tracking 380 bills proposing new legal standards, reporting requirements, and funding provisions for Maryland's 24 local school systems. Major policy areas for bills introduced in 2023 include special education, curriculum, employee relations and benefits, student health, virtual schools, and the teacher shortage. The following bill highlights provide updates focused primarily on bills which have passed in their house of origin by the March 20 deadline and will soon have hearings in the other chamber. But please note, bills not passing by the deadline can still move at any time, through April 10th. MABE is requesting continued advocacy on several of these bills.

Legislative Committee

2023 Meeting Calendar

- March 27, 2023
- April 24, 2023

MABE's Legislative Committee meetings are held virtually by Zoom on Monday mornings, 10:00 to 12:00, unless otherwise indicated. Meeting agendas and materials are posted on the [MABE website](#).

Burden of Proof in Special Education Cases

MABE continues to oppose [House Bill 294, County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof](#) (Sponsor: Del. Atterbeary). This bill would shift the burden of proof from parents to the school system in legal disputes arising in special education cases. ***HB 294 passed the House unanimously on Monday, March 20 and will soon be considered by the Senate Education Committee.***

Contact members of the [Senate Education Committee](#) and your [Senators](#) to voice your opposition to [House Bill 294](#).

Why MABE Opposes Shifting the Burden of Proof

MABE opposes House Bill 294 and the proposal to shift the burden of proof in special education legal disputes. MABE believes HB 294 is unnecessary to ensure that special education services are provided to all eligible students because there are already very strong federal and state due process protections in place and state level enforcement of compliance with these standards.

The burden of proof is a legal standard that requires parties (in this case parents/guardians) to provide evidence to demonstrate that a claim or complaint is valid (in this case that current special education services are not providing the student with a Free and Appropriate Education (FAPE) under federal special education standards).

MABE opposes shifting the burden of proof because it would not ensure that parents obtain additional education services for their students or ensure access to affordable legal representation. Shifting the burden of proof would, however, result in increased costs for lawyers, and increased workload and stress for special educators, teachers, principals, speech therapists, school psychologists and other staff. MABE also believes it is reasonable to predict that shifting the burden of proof will result in more student placements in nonpublic special education schools. In these ways, MABE believes shifting the burden of proof is contrary to sound public policy in the management and operation of special education programs in public schools.

Shifting the burden of proof to school systems would set the presumption that school systems are not meeting a student's needs and impose a new workload and legal liability on school systems and staff to prove that they are, in fact, doing so. While school systems are confident they can demonstrate that appropriate services called for in IEPs are being provided, shifting the burden of proof away from parents filing complaints would result in the increased likelihood that complaints are filed and therefore result in an increased burden on the school system to devote staff time and legal resources to preparing for and refuting such claims.

In Maryland, and nearly all states, the party initiating the action in a special education due process hearing, whether the parents or the school system, bears the burden of proof. This is consistent with a 2005 Supreme Court case arising from a complaint against the Montgomery County school system (*Schaffer v. Weast*). A Statewide Commission issued a report in 2014, and rejected making recommendations to shift the burden of proof. The Department of Legislative Services issued a report in 2019 that demonstrates that New York and New Jersey are among the six states with the highest rates of due process dispute resolution activity under similar laws passed to shift the burden of proof to their local school systems.

Expert Witness Fees in Special Education Cases

MABE continues to oppose [House Bill 1237](#), Special Education - Judicial Actions - Attorney's Fees and Related Costs (Sponsor: Del. Kaufman). This bill would authorize, but not require, a court to award reasonable attorney's fees and related costs, including expert witness fees and costs, to the parent of a child with a disability, if the parent prevails in a proceeding that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. ***HB 1237 passed the House unanimously on Monday, March 20 and an April 4th hearing is scheduled in the Senate Education Committee.***

Why MABE Opposes House Bill 1237

In accord with adopted legislative positions, MABE “Opposes legislation to mandate expanded special education services beyond federal requirements;” and “Opposes legislation to provide unilateral parental consent conditions, shift the burden of proof, or require payment of expert witness fees, in special education decisions and disputes including IEP meetings and due process hearings.”

MABE urges the legislature not to impose any new litigation-related costs, particularly costs not relating directly to the delivery of teaching and learning for students. This is especially true in the context of special education, as school systems, students, and families continue to work collaboratively toward the goal of faithfully providing the instruction and related services called for in each student's Individualized Educational Plan (IEP). Passing House Bill 1237 would not be in the best interests of this work.

The Supreme Court has also clearly ruled on the subject matter of the pending bill. The Supreme Court in *Arlington Cen. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006), ruled that IDEA does not require school districts to reimburse parents for expert witness fees even when the parent prevails in a special education dispute. The Court found that IDEA's specific provision for the awarding of attorney's fees does not make the school district responsible for other costs incurred by the prevailing parent, including expert witness fees.

Why HB 1237 is Not About Attorney's Fees (They're already recoverable.)

“Maryland regulations authorize (but do not require) the courts to award reasonable attorney's fees to the prevailing party in a due process dispute under circumstances described in specified provisions of the IDEA statute and related regulations IDEA authorizes the federal District Court for Maryland or the State circuit court in the county in which the child resides to award reasonable attorney's fees as part of the costs to the prevailing party, which may be the parent, or may be a State or local agency” - DLS Fiscal Note for HB 1237

Contact members of the [Senate Education Committee](#) and your [Senators](#) to voice your opposition to [House Bill 1237](#).

Nonpublic Special Education Teacher Salaries

MABE opposes [House Bill 448](#), as amended and passed in the House, because it would now create an unfunded mandate for local school systems to fund “pay parity” for teachers at nonpublic special education schools.

As amended, HB 448 would mandate that each local school system with a nonpublic special education school in its jurisdiction calculate the “pay parity” between their salaries and those in the nonpublic schools and include the difference in the school system’s budget. The bill would phase-in the full funding mandate beginning at 33% of the difference being mandate din FY 2025, 66% in FY 2026, and 100% in FY 2027.

“IF THE FUNDING PROVIDED TO THE NONPUBLIC SCHOOL UNDER SUBSECTION (D) OF THIS SECTION IS INSUFFICIENT FOR THE NONPUBLIC SCHOOL TO PAY LOCAL SCHOOL SALARIES TO THE TEACHERS AT THE SCHOOL, THE COUNTY BOARD SHALL INCLUDE IN ITS ANNUAL BUDGET FUNDING SUFFICIENT FOR THE NONPUBLIC SCHOOL TO PAY LOCAL SCHOOL SALARIES TO THE TEACHERS AT THE NONPUBLIC SCHOOL.”

MABE supported this bill when introduced as a funding obligation for the State, but not local school systems (as introduced the bill actually reduced local costs). MABE emphasized during the bill hearing that the association’s support was conditional on new costs to raise private school teacher salaries not being shifted to local school systems. As amended, HB 448 does precisely this.

House Bill 448, as amended and passed in the House, is now contrary to the association’s adopted legislative position which states that MABE: “Supports maintaining the State’s required share of the total costs for nonpublic placements of students;” and “Opposes legislation and state regulations which would impose any new unfunded or underfunded mandate on local school systems.” HB 448 would clearly increase the local share of the significant costs of establishing “pay parity” between local school system and nonpublic special education school staff. A hearing in the Senate Budget and Taxation Committee is scheduled on March 28th (where the cross-filed SB 311 was not acted on).

Please contact the [Budget and Taxation Committee](#) and your [Senators](#) to oppose House Bill 448 and the proposal to shift any portion of the costs for increased salaries for nonpublic special education school teachers to local school systems.

Curriculum Standards

MABE opposed [HB 119/SB 199](#) - Primary and Secondary Education - Comprehensive Health Education Framework - Established , as introduced. As introduced, this bill would have required MSDE, in collaboration with the Maryland Department of Health (MDH), to develop a comprehensive health education framework; requiring each county board of education to create an age-appropriate curriculum that is consistent with the comprehensive health education framework; requiring each county board to establish a method by which a parent or guardian may opt out of certain topics, subject to certain requirements; requiring each county board to report each year to MSDE on certain actions; and generally relating to the establishment of a comprehensive health

education framework in public schools. The House Ways and Means Committee struck all of these health curriculum-related provisions and replaced them with new language pertaining to all curriculum.

MABE has issued a Call to Action to urge opposition to [HB 119 as amended by the House Ways and Means Committee](#) and then passed by the House. The bill has been scheduled for a hearing in the Senate Education Committee on March 29th.

Why MABE Opposes HB 119 – As Amended

- **HB 119 is a radical change to Maryland educational policy that balances state and local control!** The bill would mandate that local school systems follow every element of the policy and guidelines for the program of instruction for public schools established by the State Board of Education.
- **HB 119 reaches into the boardroom and the classroom, limiting the ability of teachers to teach with any professional autonomy in their classrooms.** The bill would mandate that “all curriculum guides, courses of study, resource materials and other teaching aids” shall be in accordance with the state policy and program of instruction adopted by the State Board.
- **HB 119 covers all subject areas, resulting a complete state takeover.** The bill would result in the immediate state takeover of any local discretion or flexibility to develop and deliver instruction in every subject. The state has curriculum frameworks for Reading, Writing, English Language Arts, Mathematics, Social Studies, History, Government, Physical Education, Health, Fine Arts, Financial Literacy, Environmental Literacy, and more.
- **HB 119 grants absolute authority to the State Superintendent to decide if a local school system is not following every detail of the state standards and then withhold millions of dollars in state funding.** The bill would mandate that the State Superintendent enforce local compliance with these new state curriculum mandates by:
 - *Notifying the local board of noncompliance, which is defined as “not following every element of the policy and guidelines established by the State Board;”*
 - *Giving the local board only 30 days to alter the local curriculum;*
 - *If the local corrective action is not taken within 30 days, requiring the Comptroller to withhold 10% of the annual state education funding budgeted for the school system; and*
 - *After 90 days, another 10% of the annual state education funding is withheld if the local board has not altered its local curriculum.*
 - *Withheld funding is only released if the State Superintendent determines the “discrepancy has been resolved.”*

On March 14th the Maryland State Board of Education also issued a strong statement of opposition to this legislation:

“The Maryland State Board of Education (State Board) has been closely following House Bill 119, County Boards of Education – Curriculum Guides and Course of Study – Requirements, as it has been considered by the Maryland House of Delegates and will be considered by the Maryland State Senate. While we appreciate the interest and support in authorizing additional authority over curriculum throughout the State, the State Board opposes House Bill 119 because we believe it is unnecessary.”

“The State Board does not believe that the additional authority proposed in House Bill 119 is needed considering the broad visitatorial authority entrusted to the State Board regarding educational policies of the State and the State Superintendent’s authority to carry out those policies. The State Superintendent of Schools, Maryland State Department of Education (MSDE) and the State Board have established processes and relationships for the development and adoption of regulations, curricular frameworks and guidelines with our local education agencies, and stakeholders. This bill, as it stands, would potentially result in the unintended consequence of upending the longstanding collaborative relationship between MSDE, local education agencies, and stakeholders. It may also interview with efforts to implement the Blueprint for Maryland’s Future.”

Read the [March 14, 2023 Letter from State Board President Crawford to Members of Educational Community and Members of the General Assembly Opposing House Bill 119.](#)

Again, MABE asks that you please contact your Senators to tell them you oppose House Bill 119, and oppose similar amendments to Senate Bill 199, because if passed this legislation would result in a total state takeover of local control over all curriculum frameworks, standards, and even instructional materials. [Link to How to Contact Your Senators.](#)

The FY 2024 State Budget for Education

House Bill 200, the State Budget Bill for Fiscal Year 2024, including the provision of State Education Aid, has passed in the House and Senate.

Under the Aid to Education section, the State Budget provides slightly more than \$10 billion for education formulas and program, including:

Foundation Program	Career & Technical Education
Compensatory Education	Limited English Proficient
Retirement Benefits	Guaranteed Tax Base
Children at Risk	Food Service
Prekindergarten	Student Transportation
Special Education	Blueprint Transition Grants
Concentration of Poverty Grants	At-Risk Early Education Grants

The Budget Bill, and accompanying Budget Reconciliation and Financing Act (BRFA), are in the process of passing in Senate, following initial adoption in the House. The Senate and House versions of the Budget include differences in certain provisions for state education funding. The Governor’s proposed Budget provided \$500 million in additional investment in the Blueprint Fund, to

which the House added another \$400 million. The Senate chose to add the lesser amount of \$300 million, again in addition to the \$500 million already included in the Budget Bill as introduced. These significant additional investments in the Blueprint Fund signal the Governor's and Legislature's strong commitment to sustaining future funding for Blueprint implementation and success.

The State Budget for public education also includes all state funding for the MSDE Headquarters, the Division of Rehabilitation Services, and grant funding to other outside organizations.

Overall, the FY 2024 net increase of more than \$90 million primarily reflects the increase in special funds supporting State Aid for the Blueprint for Maryland's Future program implementation. The largest increase in the Blueprint for Maryland's Future Fund (Blueprint Fund) allowance from fiscal 2023 to 2024 is in compensatory education funding, which receives an additional \$390 million due a 34% increase in free and reduced-price meal (FRPM) student enrollment. In addition, general funds increase by \$150 million due primarily to increases for State aid for teacher retirement, student transportation, and bonuses for noncertificated support professionals.

Time to Care Act Revisions & Timeline Extension

MABE is supporting [Senate Bill 828](#), as amended and passed in the Senate, to provide reasonable extension and clarifications of timelines for developing regulations and beginning to collect employer and employee contributions for the new Family and Medical Leave Insurance (FAMLI) Program and Fund. MABE supported the intent of the bill as introduced, and joined the Maryland Association of Counties (MACo), Maryland Municipal League (MML), and Public School Superintendents Association of Maryland (PSSAM), in requesting amendments to further extend the deadlines for complying with the new law, including through the law's process for securing a waiver based on the quality of the employer's benefits plan.

Specifically, MABE requested two additional amendments to further extend the funding timeline and to guarantee that clear standards are in place to facilitate local plan alignment with the state program. MABE has emphasized the need for timely and clear criteria for developing local employee benefits programs that meet the standards for qualifying exemptions. Local school systems and other local governments should be able to rely on formally adopted standards as they work to modify their benefits and pursue a qualifying exemption. In addition, school systems and local governments will utilize this time to develop annual budgets that are fully informed by the established program.

Fortunately, the Maryland Department of Labor (DOL) and bill sponsors have agreed to amendments to provide even more time than initially requested by MABE and other organizations. Under the bill as amended and passed in the Senate, DOL would be required to adopt regulations on or before January 1, 2024. These regulations must include the provisions governing the procedures and criteria for employers to apply for approval of a waiver from participating in the State plan. Contributions to the FAMLI Fund, at a 50% employer/employee contribution rate, would not commence until October 1, 2024 (extended from Oct. 1, 2023).

SB 828 has been scheduled for a hearing in the House Economic Matters Committee on March 30th. The cross-filed bill, House Bill 988, had not been acted on.

Virtual Schools

The Senate has passed **Senate Bill 610** to establish requirements related to virtual education for public schools. The bill includes several provisions MABE supports, with a major caveat that the virtual school program currently operating on the Eastern Shore will be allowed to operate through the 2024-2025 school year, but not beyond, unless a not-for-profit entity is operating the virtual school program.

- A local board of education may authorize the local superintendent, in cases of severe weather conditions, to provide virtual education days to students instead of closing the public schools in the county. Before a local board of education may authorize the local superintendent to provide these virtual education days to students, the local board must (1) discuss this topic at an open meeting and (2) vote affirmatively to authorize the local superintendent to provide virtual education days to students during a severe weather event.
- The bill's requirements for virtual schools do not apply to (1) a virtual learning opportunity offered by MSDE or a local board of education under the Maryland Virtual Learning Opportunities (MVLO) program; (2) an upper-level high school program that has online components and designs a student's schedule to accommodate the student's work schedule; or (3) a public school operating under a virtual education plan during a prolonged state of emergency.
- A virtual school must provide each enrolled student with access to the following services: (1) to the extent practicable, extracurricular activities including sports at the public school the student would otherwise attend; (2) notwithstanding any other law or regulation and subject to a participation agreement between the public school and the parent or guardian of the student, participation in organized athletics and on athletic teams at the public school the student would otherwise be required to attend; (3) wraparound services; (4) food and nutrition services; and (5) health care services equivalent to services available to students who receive in-person instruction in the county's public schools.
- After collaboration with local school systems, MSDE must establish in regulations specified standards for a virtual school. A local board must adopt policies for the mandatory return to in-person instruction for students enrolled in a virtual school, including students who are failing academically after receiving the appropriate supports.
- In addition to a current requirement to have a teaching certificate or any other relevant professional certification authorized under the Maryland Code of Regulations (COMAR 13A.12.01), a teacher or education support personnel assigned to a virtual school must (1) be an employee of the county, or collaborating county, that established the virtual school; (2) be subject to the collective bargaining agreement of that jurisdiction; and (3) have access to professional development.
- A local board of education may not contract with a for-profit entity, but may contract with a nonprofit entity, to operate or administer a virtual school; however, this may not be construed to prohibit a local board from contracting with a for-profit entity for goods and services for a virtual school.

A hearing in the House Ways and Means Committee is scheduled for March 29th.

School Bus and School Zone Safety

MABE opposes [House Bill 849](#) because it would weaken student transportation and student pedestrian safety protections. HB 849 would amend the law to require that a law enforcement agency issue a warning, instead of a citation, for a first violation captured by a school bus monitoring camera if (1) the violation occurred on a road that has four or more lanes of traffic and (2) the motor vehicle was traveling in the opposite direction of the school bus.

Under current law, if a school vehicle stops on a roadway and is operating alternately flashing red lights, the driver of any other vehicle meeting or overtaking the school vehicle must stop at least 20 feet from the rear of the school vehicle, if approaching from its rear, or at least 20 feet from the front of the school vehicle, if approaching the school vehicle from its front. The driver of any vehicle meeting or overtaking the school bus may not proceed until the school vehicle resumes motion or the alternately flashing red lights are deactivated. The requirement does not apply to the driver of a vehicle on a divided highway, if the school vehicle is on a different roadway. A hearing in the Senate Judicial Proceedings Committee has not been scheduled for March 29th.

MABE opposes [Senate Bill 11](#) because it would make it more difficult to maintain and establish school zones in which lower, safer speed limits are set and enforced within a reasonable distance from the school. This bill would reduce the radius within which a school zone may be established and speed monitoring systems may be placed and used within a school zone, unless a traffic engineering study indicated otherwise. As amended and passed in the Senate this bill would limit the radius to 500 feet unless a traffic engineering study recommends establishing a school zone up to one half mile from the school. SB 11 was heard in the House Environment and Transportation Committee on March 23rd.

The Educator Shortage Act

MABE is supporting House Bill 1219 and Senate Bill 893, the Governor's Educator Shortage Act, [House Bill 1219](#) has passed in the House, with major amendments. As amended, the bill would:

- Require MSDE, in consultation with the Maryland Higher Education Commission, to establish specific goals for the recruitment and retention of teachers in teacher preparation programs in the State;
- Require the Department to establish and maintain a Maryland Educator Recruitment, Retention, and Diversity Dashboard;
- Including under the category of "high staff qualifications" for publicly funded eligible prekindergarten providers certain early childhood education teachers employed for a certain period of time;
- Altering the requirements for, and expanding the purpose of, the Nancy Grasmick Teacher Award to include mental health professionals employed by public schools in the State;
- Altering the qualifications for applicants and recipients of the Teaching Fellows for Maryland program; and
- Establishing the Teacher Development and Retention Program and Fund to provide support to students interested in pursuing careers in the teaching profession.

A hearing has not yet been scheduled in the Senate Education Committee.

Teacher Apprenticeship Program

MABE is also supporting [Senate Bill 668](#), the Teacher Degree Apprenticeship bill. This bill establishes the Teacher Apprenticeship Startup Grant Program administered by the Maryland Department of Labor (MDL) to (1) provide opportunities to begin a career in education in the State to high school students, college students, and career changers; (2) develop a cohort of individuals qualified to work as teachers in the State; and (3) encourage local boards of education to hire apprentices. In fiscal 2025, MDL may award up to \$500,000 to a sponsor for development and launch of a teacher apprenticeship program. A program sponsor, which may include a local school system, must establish a multi-year registered apprenticeship program that develops a career path, such that level one is a tutor, level two is a paraeducator, and level three is a teacher.

A high school level apprenticeship program under a teacher apprenticeship program must be designed to allow a participating student to maximize attainment in college level credits through advanced placement courses, an early college program (or dual enrollment) at a student's high school or an institution of higher education, and a teacher CTE program. A high school level program must also be designed to allow a student to complete coursework and training through an innovative school scheduling model so that the student can complete the apprenticeship's tutoring requirements during regular school hours and outside regular school hours. A hearing is scheduled in the House Ways and Means Committee on March 29th.

Student Health Services & Telehealth Space

[House Bill 878](#) has passed in the House, and would require each local board of education to establish a policy to accommodate students who need to participate in telehealth appointments scheduled during the school day. The telehealth policy must require each middle and high school to designate a space for student telehealth appointments that (1) is a private space in the school; (2) has Internet access; (3) includes at least one seating option with a flat surface and electrical outlet nearby to accommodate placement of a laptop; and (4) is not a bathroom or closet. Beyond the definitions and requirements in the bill, no statewide student health guidelines, typically developed by MSDE and the Maryland Department of Health, are required to be developed, allowing each local board to develop its own policy. However, the bill states that "on request, the Department shall provide technical assistance to a county board to establish the student telehealth policy required under this section." A hearing is scheduled in the Senate Education Committee on March 29th.

School Facilities

[House Bill 458](#) and [Senate Bill 360](#) have passed in their respective chambers. This bill makes the Interagency Commission on School Construction (IAC) an independent unit of State government and allows appointed members of IAC to be removed by their appointing authority for incompetence, misconduct, or failure to perform their duties. The bill raises the cost thresholds for specified actions related to school construction that must be approved by the State Superintendent. Finally, it makes other technical and procedural changes related to the approval and funding of school construction projects in the State. It also repeals the School Safety Grant Program (SSGP) and the Aging Schools Program (ASP) beginning in FY 2027. The House bill was significantly

amended to include provisions applying only to Prince George's County's public private partnership. HB 458 is scheduled for a hearing in the Senate Budget and Taxation Committee on March 28th.

Bill Report & Hearing Schedules

Throughout the 2023 legislative session MABE is providing an updated weekly Bill Report containing MABE's positions and the status of all the bills we are tracking, including hearing dates.

- [March 24, 2023](#)

Advocacy Resources

- [MABE's Annapolis Advocacy Center](#)
- [MABE's State Board Advocacy Center](#)
- [MABE's Federal Advocacy Center](#)

For more information, contact John R. Woolums, Esq., MABE's Director of Governmental Relations, at jwoolums@mabe.org or 410-841-5414.

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