

MONTGOMERY COUNTY BOARD OF EDUCATION
Rockville, Maryland

March 11, 2021

MEMORANDUM

To: Members of the Board of Education
From: Danielle M. Susskind, Coordinator, Legislative Affairs
Subject: Recommended Positions on Education Legislation

The purpose of this memorandum is to provide information regarding proposed legislation that could impact Montgomery County Public Schools (MCPS). These bills have been analyzed to determine any impact on MCPS, as well as whether or not they are consistent with the legislative annual priorities (hereafter platform) that were adopted by the Board of Education on November 10, 2020. Attachment A provides the recommended positions on the bills not covered by the platform that may require a position from the Board. Attachment B provides a list of bills that are covered under the platform and for which no action is necessary. Attachment C provides bills that are included for your information and do not require a position.

Each bill is listed below with a hyperlink to the bill text. To access the text online, right click each hyperlink (bill number).

Bills with Recommended Positions (Attachment A)

[HB0655](#) Local Elections - County Commissioner and County Boards of Education - District Voting
[SB0785](#) State Board of Education Membership and Terms - Capability and Capacity Study of Education Agencies
[SB0860](#) Workers' Compensation – COVID-19 Occupational Disease Presumption – Public School Employees

Bills Covered Under the Platform (Attachment B)

Learning

[HB0630](#) Primary and Secondary Education – School District Energy Use – Policy and Study

Respect

[HB0541](#) Montgomery County - Residential Property Sales - School District Information

- [HB0828](#) Good Teacher Protection Act
- [HB0998](#) County Boards of Education - In-Person Instruction and Related Services – Requirement
- [HB1166](#) Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training
- [HB1322](#) Primary and Secondary Education - School Personnel - Prohibition on Retaliation for Not Returning to In-Person Instruction and Work

Equity

- [HB1181/SB921](#) County Boards of Education – Accessibility Standards – Digital Tools (Nonvisual Access Accountability Act for Grades K-12 Education)
- [HB1355](#) Primary and Secondary Education – Repeating Previous Grade Level – Authorization (Education Recovery Act of 2021)
- [HB1053/SB0882](#) Operating Budget – Education Programs – Mandated Funding

Bills for Information Only (Attachment C)

- [HB1275](#) Maryland Automobile Insurance Fund – Liability Insurance – School Bus Contractors
- [HB1326/SB0727](#) Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave

I will continue to monitor the proposed legislation and bring you recommended positions on additional bills that will impact MCPS.

Attachments

DMS:dms

**HB0655 Local Elections - County Commissioner and County Boards of Education -
District Voting**

Sponsor Delegate Crosby

Committee *Ways and Means*

Synopsis

This bill was initially aimed at districts with policies for electing county commissioners that allow a district representative to be elected by a plurality of the county. The bill would change this to a candidate needing a plurality from their district. Initially, this bill did not include Board of Education members, however, an amendment was accepted on the House floor that would add the Board of Education members to the bill.

Analysis

Currently, when you run for the Board as part of a district, the entire county votes—this would change that so only those within the district can vote for the district representative. Specifically, it impacts Calvert, Cecil, Garrett, Montgomery, Queen Anne’s and St. Mary’s counties by eliminating at-large elections for members representing districts.

The Montgomery County Board of Education believes that issues of election should be determined in conjunction with the electors. This bill was amended on third reader in the House to add Board members. There was no opportunity for a hearing or for the weighing in of the community’s perspective. The Board believes that a decision such as this should involve hearings within the county and be the decision and choice of the electorate.

Furthermore, with the completion of the 2020 census, district lines are about to be redrawn to reflect the changing population. Policy also allows for a larger school Board (currently we have 8 members, the law allows up to 11). If there is going to be a change to the electoral process, the Board believes it should be done together at the local level to ensure all changes are aligned and consistent.

Finally, the Board is concerned that changing the electoral process could result in highly parochial politics. Currently Board members are attentive to all schools in the county, regardless of district. This bill has the potential to create more siloed and competitive districts that are considered individually more often than as part of the whole.

Position: Oppose

SB0785 State Board of Education Membership and Terms - Capability and Capacity Study of Education Agencies

Sponsor Senators Ferguson and Pinsky

Committee *Education, Health, and Environmental Affairs*

Synopsis

For the purpose of requiring the Governor to appoint members of the State Board of Education on or before a certain date in a certain year; establishing qualifications for members of the State Board; requiring a member's term to begin on a certain day; requiring the Accountability and Implementation Board, in consultation with certain entities, to contract with a consultant to conduct a certain capability and capacity study of certain education agencies; providing for the purpose of the capability and capacity study; requiring certain State agencies and entities to provide certain information to the Accountability and Implementation Board and the Department of Legislative Services in a timely manner; requiring the Governor to include certain funding in the annual budget bill for the capability and capacity study; requiring the Accountability and Implementation Board to submit certain reports to the Governor and the General Assembly on or before certain dates; requiring the Governor to appoint certain members to the State Board in 2021 that meet certain qualifications; providing for the termination of the term of certain members of the State Board; making this Act an emergency measure; and generally relating to the State Board of Education and a study of education agencies.

Analysis

The bill adds requirements for State Board members that include that at least one member have:

- a high level of knowledge and expertise in using antiracism and equity principles, practices, and frameworks in an educational setting to make systemic changes that improve student outcomes;
- a high level of knowledge and expertise concerning the successful management of a large business, nonprofit, or governmental entity and has served in a high-level management position;
- knowledge and expertise in instructional programs, adaptations, and supports for students with disabilities;
- knowledge and expertise in multilingual instruction and in achieving proficiency in English as a second language;
- knowledge and expertise in early childhood development and education;
- two members shall have a background and experience in programs that enhance socioeconomic and demographic diversity in public schools;
- two members shall have experience implementing successful education reform efforts or innovative public-school designs; and
- two members shall have experience in successfully administering a public school, a school system, or an institution of postsecondary education.

Position: No position

SB0860 Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees

Sponsors Senators Zucker and Guzzone

Committee *Finance*

Synopsis

Establishing that, under certain circumstances, public elementary and secondary school employees in the State are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19; providing that a certain presumption may be rebutted with certain evidence; and terminating the Act after July 31, 2022.

Analysis

The bill in its current state should be opposed. It creates a presumption for the coverage of public-school workers who contract COVID-19. The following are the issues that exist with this bill from a legal standpoint:

1. This bill creates a rebuttable presumption that COVID-19 was caused by the job unless the employer can demonstrate another cause of COVID-19. This bill creates a Morgan presumption rather than a Thayer-Wigmore bursting bubble presumption that is normally applicable to presumptions. That means that even if the employer/insurer introduces evidence of to rebut the presumption, the employer/insurer maintains the burden of both production and persuasion instead of that evidence “bursting the bubble” of the presumption. The only other such presumption in Maryland law is in family law that a child born during the marriage is the husband’s child.
2. This bill makes an accidental injury into an occupational disease. An accidental injury is one that occurs by a singular incident. To be accidental, the injury occurs "...by chance or without design, taking place unexpectedly or unintentionally.” *Harris v. Bd. of Educ.*, 375 Md. 21, 37, 825 A.2d 365, 375 (2003). A one-time exposure that causes a disease would be an accidental injury. An occupational disease is the antithesis of an accidental injury. It does not imply “suddenness” like an accidental injury. Rather an occupational disease is something that occurs over time. It must be due to the nature of the employment and be slow and insidious in its development. *Foble v. Knafely*, 176 Md. 474, 486, 6 A.2d 48, 53 (1939). It is not the result of a one-time exposure. Therefore, an exposure to the coronavirus would, if compensable, fall under the category of an accidental injury rather than an occupational disease. Placing the coronavirus under an occupational disease statute is contrary to the law.
3. Under this bill, the legislature lists certain conditions for coverage. These requirements, discussed below, are not well defined and leave a much ambiguity.
 - a. To be covered under the presumption, the employee must have either tested positive or was diagnosed with COVID-19. As a result, the bill forces

Attachment A: Positions on Proposed Legislation
03-11-2021

- coverage even if the claimant tests negative. If a doctor says the employee has COVID-19, the presumption applies. This requirement could lead to fraud.
- b. The second requirement is that the individual's duties required the employee to work outside of the home within fourteen days of the "diagnosis" or positive test. The timing of the diagnosis really has nothing to do with the 14-day incubation period of the virus; moreover, now, the science is indicating that the incubation period is only ten days.
4. If there is a diagnosis of COVID-19 (even if no positive tests for COVID-19 or evidence of the antibodies), the door will open to compensate all types of conditions including psychiatric, heart disease, respiratory ailments, etc. for which the science has not clearly related to the coronavirus.
 5. Making COVID-19 an occupational disease means that there is essentially no statute of limitations that will apply to these claims because instead of statute of limitations running two years from the date of disablement, the statute runs two years from when the employee had actual knowledge that the COVID-19 was due to his employment. Actual knowledge can extend the limitations by decades and has done so in many county cases under the heart-lung presumption and other occupational disease.
 6. The statute is retroactive to apply to all claims filed after March 1, 2020, so will be applied to all cases filed before the enactment of the bill.
 7. There is a sunset provision that ends the presumption on July 22, 2022.

POSSIBLE AMENDMENTS:

Amendments should be pursued to make the bill more meaningful and fairer to all parties. COVID -19 should be categorized as an accidental injury. It can be placed as 9-504.1 as a COVID -19 presumption (9-504 is hernias). The conditions for the presumption should be as follows:

1. Presumption is a Thayer-Wigmore bursting bubble presumption.
2. Test positive for the coronavirus.
3. Accidental injury date is the date that the employee tested positive for the virus or for the antibodies whichever occurs first.
4. Duties required the employee to serve at a location, other than the home or residence, within 10 days of the positive COVID -19 test.
5. The employer can rebut the presumption by presenting evidence of other risk factors aside from work.
6. Presumption applies to all employees who meet the requirements of the presumption.
7. The presumption applies only to claims in which the employee tests positive for the virus after the enactment of this legislation.
8. Compensation for the effects of COVID -19 under the presumption should be limited to one year of indemnity benefits, whether temporary total disability or permanent partial disability or a combination thereof, and unlimited medical benefits.

The law at present, if strictly interpreted by the Commission, would not provide coverage for the coronavirus. The case law on accidental injury is clear even if causation could be proven that the Act does not "...authorize an award in case of an injury from a peril which is common to all mankind, or to which the public at large is exposed." *Pariser Bakery v. Koontz*, 239 Md. 586, 588,

Attachment A: Positions on Proposed Legislation
03-11-2021

212 A.2d 324, 325 (1965). Agreeing to a presumption of any kind would be of benefit to the employees of the state while at the same time ensuring that the employers could mount a defense when the employees have engaged in risky behavior including travelling, attending events with more than 10 people, not wearing masks, etc. Also, placing the presumption under 9-504.1 will ensure that the governmental employers maintain their offsets. Ensuring that the claimant tests positive for the virus will eliminate the psychiatric only claims for those employees who do not have the virus but make claims for fear of getting the virus. Most importantly, the long-term effects of the coronavirus are largely unknown. Also, the newest literature on the virus indicates that there are “long haulers” who will have a host of symptoms of unknown duration. The list of potential lingering symptoms includes the following: coughing, debilitating fatigue, body aches, joint pain, shortness of breath, difficulty sleeping, headaches, brain fog, etc. As time goes on, the list continues to grow. Since the County would be agreeing to a presumption for a disease that is almost impossible to prove causation on, a limit on monetary benefits should be included in the presumption.

Position: Support with Amendments
Amendment language above

Learning

HB0630 **Primary and Secondary Education – School District Energy Use – Policy and Study**

Sponsor Delegate Solomon

Committee *Appropriations*

Synopsis

Requiring each school district to adopt or update a school district energy policy beginning July 1, 2022; specifying the contents of a school district energy policy; encouraging school districts to set targets to increase the school district's use of renewable energy and reduce the school district's greenhouse gas emissions; requiring that a school district energy policy be posted on the school district's website and updated every two years; etc.

Analysis

HB0630 includes three significant changes to current practice:

- The bill expands and funds the Maryland Net Zero Energy School Initiative Grant Program. This could be beneficial to Montgomery County Public Schools (MCPS). The previous program only provided funding for 3 schools, one in Howard County and two in Baltimore City.
- MCPS has an Energy Policy (Policy ECA, *Energy Conservation*), which MCPS is planning to review and update over the next year. HB0630 requires targets to be established that increase renewable energy and decrease greenhouse gas emissions; current policy only requires that general conservation goals and objectives be set.
- MCPS tracks renewable energy purchased and generated, but has not reported this information to external agencies.

Regarding the remainder of HB0630, MCPS already has systems and/or other county mandates in place that effectively already comply with the content:

- During normal school operation, MCPS posts quarterly individual school energy use on the Division of Sustainability and Compliance website.
- MCPS reports annually to the County total renewable energy credits purchased per year.
- MCPS also calculates the EUI (Energy Use Index) (energy use/square foot), both as a district average as well as for each individual school. This data for individual schools goes back to 2014, and the systemwide data goes back to 1978.
- MCPS already participates in a County benchmarking program for school buildings.
- MCPS has published a Sustainability Plan, generally on a two-year schedule.

Position: Support

Respect

HB0541 Montgomery County - Residential Property Sales - School District Information

Sponsor Montgomery County Delegation

Committee *Environment and Transportation*

Synopsis

For the purpose of requiring a contract for the sale of single-family residential real property in Montgomery County to contain a certain notice concerning school district boundary changes; establishing that a certain contract may not be voided under certain circumstances; and generally relating to notice of school district information in the sale of residential real property in Montgomery County.

Analysis

The proposed legislation would require that a contract of sale for a single-family residential property in Montgomery County include a notice that school boundaries “designated for the property may be subject to change.” Montgomery County Public Schools conducts boundary studies that do reassign students and, therefore, the proposed legislation does align with the school system’s practice and process of boundary reassignments.

Position: Support

HB0828 Good Teacher Protection Act

Sponsor Delegate Cox

Committee *Judiciary*

Synopsis

Providing that a staff member of a school, acting in an official capacity, is not civilly liable for personal injury or property damage resulting from intervention in a student altercation or other student disturbance if the staff member intervened in a reasonably prudent manner and the actions taken do not constitute grossly negligent, willful, wanton, or intentionally tortious conduct.

Analysis

(2020)—The proposed intent of this legislation appears to already be accomplished by existing statutes. Section 5-518(e) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, which states: A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board’s liability. And Section 7-307 of the Education Article of the Annotated Code of Maryland provides protections specifically for reasonable intervention in fights or physical struggles among students. This provision states in relevant part: (a)(1) A principal, teacher, school security guard, or other school system personnel in any public school may take reasonable action necessary to prevent violence on school premises or on a school-sponsored trip,

including intervening in a fight or physical struggle that takes place in his or her presence, whether the fight is among students or other individuals. (2) The degree and force of the intervention may be as reasonably necessary to prevent violence, restore order and to protect the safety of the combatants and surrounding individuals. (c) In any suit, claim, or criminal charge brought by a parent or other claimant of one of the combatants against the principal, teacher, school security guard, or other school system personnel because of the preventive action or intervention, the county board: (1) Shall provide legal counsel for the principal, teacher, school security guard, or other school system personnel or may provide reimbursement for the reasonable expenses of the legal defense of any criminal charge if the county board considers it appropriate; and (2) Shall save the principal, teacher, school security guard, or other school system personnel harmless from any award or decree against him. Insofar as the current legislation provides broader protections than existing law, it may undercut efforts by MCPS, as well as other districts and the state and federal departments of education, to promote restorative practices and de-escalation, while limiting restraints and seclusions to tools of last resort. A more effective alternative would be to amend Section 7-307 of the Education Article of the Annotated Code of Maryland to limit the liability of school districts, as well as school district employees for reasonable interventions in fights.

Because of the overlap with existing law, it is estimated that this proposed legislation would have limited fiscal impact.

Position: Oppose

HB0998 **County Boards of Education - In-Person Instruction and Related Services - Requirement**

Sponsor Delegate Griffith

Committee *Ways and Means*

Synopsis

Requiring, notwithstanding any law, regulation, or executive order to the contrary, each county board of education, for the 2021–2022 school year, to require school buildings to be open each school day to provide in-person instruction and related services, including services such as speech-language pathology services, counseling, physical therapy, and occupational therapy, to certain students; requiring each county board to provide instruction and related services to certain students in person except under certain circumstances; etc.

Analysis

- This proposed legislation directly conflicts with the consistent guidance provided by the US Department of Education (USDOE) and the Maryland State Department of Education. In the unique and ever-changing environment created by COVID-19, USDOE has recognized that these exceptional circumstances may affect how services are provided and that during the national emergency, schools may not be able to provide all services in the same manner they are typically provided. Per state and federal guidance and the implementing regulations, local educational agencies (LEAs) are required to provide equitable access to general education opportunities and to continue to provide a free appropriate education (FAPE) to students with disabilities to the maximum extent possible.

Attachment B: Platform Positions o Proposed Legislation
03-11-2021

- Specifically, its March 12, 2020, Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak, the USDOE indicated that:
 - If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child’s individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.
- Again, in the USDOE March 16, 2020, Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students, the guidance was emphasized that:
 - The Department understands that there may be exceptional circumstances that could affect how a particular service is provided. If a student does not receive services after an extended period of time, the student’s IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost.
- The USDOE guidance recognizes the importance of each individual local school system’s need for flexibility in making determinations for how the special education and related services may need to be provided during the period of extended school closures resulting from the pandemic. Furthermore, the guidance provides an appropriate remedy, i.e., provision of compensatory services, in situations where the school system has been unable to provide the special education and related services that enable the student to make progress towards their IEP goals and to receive FAPE. HB0998 disregards the existence of this remedy.
- In the March 21, 2020, Supplemental Fact Sheet (Español) Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, USDOE states:
 - It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services—or even making decisions about how to provide services—IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.
- HB0998 usurps the local school system’s Board of Education’s authority to make local decision regarding the instructional models for classroom and related services provided to students with special education services or Section 504 accommodations by mandating that all services be

Attachment B: Platform Positions o Proposed Legislation
03-11-2021

provided in person regardless of the specific health and safety guidance provide to the local school system from local health and safety professionals and county agencies.

- This proposed legislation requires each local school system to provide educational services to English Language Learners, students in foster care, students receiving Free and Reduced-price Meals System (FARMS), students in Title I schools, students in active military families, students from migrant families and students with disabilities in the 2021–2020 school according to the Maryland Department of Health guidelines. The requirement to follow state guidelines rather than local guidelines is faulty in that it does not account for the unforeseen specific conditions that each local school system will encounter next school year. Additionally, having all of these student populations in schools at once does not account for any current CDC guidelines.
- This proposed legislation requires that, “Each county board shall provide in–person instruction and related services in a manner that adheres to health and safety standards and protocols established by the State Department of Education and the Maryland Department of Health to limit the transmission of COVID–19.” Yet, it negates the existing MSDE Technical Assistance Bulletin, 20-1, Serving Children with Disabilities under IDEA during School Closures due to COVID-19 Pandemic, issued March 2020 and revised October 2020 which states:
- The MSDE recognizes that during these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing education services to these students. However, many disability-related modifications and services may be effectively provided through alternative delivery options, such as distance technology, which comply with the directives of health and governmental officials related to the steps necessary to keep students and school staff healthy.
- HB0998 fails to factor in the extreme disparity between numbers of confirmed positive cases and deaths between highly and low populous counties. For example, Montgomery County still continues to be the second highest county in Maryland with confirmed cases. According to the Maryland Department of Health Maryland COVID-19 Data Dashboard, Montgomery County has 61,160 confirmed cases and 1,319 deaths (44*; asterisk= Probable death, death certificate lists COVID-19 as the cause of death but not yet confirmed by a laboratory test) compared to Worcester County with 3,169 cases and 86 deaths (1*). This data indicates exactly why the guidance from each local department of health is crucial in the development of data-driven return to school plans that protect the safety and health of all student populations and school staff members.
- HB0998 does not account for the potential need for the local school system to rely on alternative methods of delivering classroom instruction and related services in the event of an emergency school closure that may occur on the local level and places the decision making authority regarding instructional delivery methods at the state level.
- This proposed legislation makes no reference to the local school system’s concurrent legal obligation to adhere to the requirements of the *Americans with Disabilities Act Amendments Act* (ADAAA) for school staff members. Many service providers may meet the criteria for employee accommodations under the ADAAA, making them unable to provide in-person services during a community health crisis. To meet the requirements of this bill, the local school system would need to rely on substitute teachers or contractors for instruction and related services to be delivered in person.
- HB0998 fails to account for the possibility that alternative methods of delivering instruction and related services for student with disabilities may need to be in place for a limited period of time to maintain access to services while students are being phased back into school setting in a

manner that is in accordance with research associated with best practices for limiting the transmission of viral infections.

- The President’s January 21, 2021, Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers, indicates that “First, the health and safety of children, students, educators, families, and communities is paramount.” Additionally, it directs the US Secretary of Education to provide evidence-based guidance to assist states and elementary and secondary schools in deciding whether and how to reopen, and how to remain open, for in-person learning; and in safely conducting in-person learning. HB0998 does not follow the spirit of this Executive Order by failing to include the need for data driven, evidence-based decisions at the local levels.
- It should be noted that the proposed legislation incorrectly lists “behavioral health services and nutrition services” which are not related services within the definition in IDEA or the Code of Maryland Regulations (COMAR). Therefore, HB0998 would be imposing an additional requirement to provide in-person related services that are not even contemplated by the existing laws. Specifically, COMAR 13A.05.01.03(B)(65) states,
 - "Related services" means transportation and such developmental, corrective, and other supportive services as may be required to assist a student with a disability to benefit from special education.
 - "Related services" includes:
 - Speech-language pathology;
 - Audiology;
 - Interpreting services;
 - Psychological services;
 - Physical and occupational therapy;
 - Recreation, including therapeutic recreation;
 - Early identification and assessment of disabilities in students;
 - Counseling services, including rehabilitation counseling;
 - Orientation and mobility services;
 - Medical services for diagnostic or evaluation purposes;
 - School health services, including school nursing services;
 - Social work services in schools; and
 - (xiii) Parent counseling and training.

Position: Oppose

HB1166 Education – Physical Restraint and Seclusion – Requirements, Reporting, and Training

Sponsor Delegate Ebersole

Committee *Ways and Means*

Synopsis

Prohibiting a public agency or nonpublic school from using a physical restraint on a student as a behavioral health intervention, except under certain circumstances; prohibiting a public agency or nonpublic school from using seclusion as a behavioral health intervention for a student, except under

certain circumstances; requiring a certain risk assessment to be completed at certain points for a student who has an individualized education plan and experiences a seclusion; etc.

Analysis

- Local education agencies (LEAs) in the state of Maryland are currently permitted to use restraint and/or seclusion in three circumstances in accordance with Code of Maryland Regulations (COMAR) 13A.08.04.05, which include circumstances when:
 - There is an emergency situation and 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;
 - The student's behavioral intervention plan (BIP) or Individualized Education Program (IEP) describes the specific behaviors and circumstances in which physical restraint may be used; or
 - 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.
- The proposed legislation creates a restriction that physical restraint or seclusion may not be used by a public agency or nonpublic school as a “behavioral health intervention” which is undefined. This vague definition of when physical restraint or seclusion may be used appears to eliminate the ability of IEP teams to determine that use of a restraint or seclusion may be a necessary component of the student’s IEP and/or BIP based upon their unique needs and behavioral challenges. Furthermore, it removes the ability of parents to provide consent during the interim period of development of a BIP.
- HB1166 eliminates the current requirements in COMAR which refers to an “emergency situation” and which requires that the other less intrusive, nonphysical intervention have “failed or been determined inappropriate.” Instead there is no reference to the emergency situation requirement and the other interventions only need to be ineffective rather than have failed or been determined inappropriate. The new language appears to set forth a lesser standard for the serious nature of when restraint or seclusion should be used and fails to emphasize that it must be used as a last resort. These changes to the current COMAR requirements also are inconsistent with the current Maryland State Department of Education (Technical Assistance Bulletin, Student Behavior Interventions: Restraint and Seclusion, and Addendum, Student Behavior Interventions: Physical Restraint and Seclusion Supplement on Students with Disabilities).
- In addition to the requirements referenced above, prior to the use of seclusion as a “behavioral health intervention,” the public agency is required to have an onsite observation from a licensed physician, psychologist, or clinical social worker who is trained in the legal requirements of COMAR and who is familiar with the student. It is unclear if the burden is on the school district to contract with these licensed medical professionals to ensure that they are onsite for an observation. Furthermore, for students with IEPs, a risk assessment that the use of seclusion is not contraindicated is required to be completed annually. It is unclear if the onus is on the parent/guardian or on the public agency to obtain this information.
 - If the burden lies with the school district, then local education agencies (LEAs) would be required to obtain parental consent to disclose any confidential and/or personally identifiable information of the student consistent with the legal requirements of the *Individuals with Disabilities Education Act* (IDEA) and the *Family Educational Rights and Privacy Act* (FERPA). This proposed legislation does not account for situations in which the parent may refuse to provide written consent for the risk assessment or in which a parent may revoke a previous written consent. If the school district is unable to obtain

- parental consent for a risk assessment, then there is an enhanced risk of safety to the student, other students, and staff members who would be unable to use seclusion when necessary to prevent imminent danger or harm.
- If obtaining the risk assessment is the responsibility of the parent/guardian, then the proposed legislation does not account for the costs associated with engaging a medical professional and that not all parents/guardians may have means, finances or medical insurance to access such professionals. Additionally, the parent cannot be legally required to provide copies of privately obtained medical reports.
 - A risk assessment that the use of seclusion is not contraindicated is required to be completed as part of each annual review meeting for students with IEPs.
 - IDEA requires LEAs to “in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” LEAs also are required to review the student’s IEP at least once annually to measure student progress and to ensure the appropriateness of the student’s IEP. Therefore, this vague provision may cause confusion with existing legal obligations to ensure the effectiveness of behavioral interventions outlined in the student’s IEP.
 - The contraindications of the use of seclusion are already addressed in the COMAR requirements, which include “Review available data to identify any contraindications to the use of seclusion based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate.” The ability to consult with appropriate medical professionals and to obtain relevant medical information from the parent/guardian is more accessible to IEP teams and does not hinder/delay their ability to have efficient and effective annual review meetings.
 - It is unclear whether the medical professional who conducted the risk assessment must attend the IEP team meeting. Typically, when there is an assessment to be reviewed during the IEP team meeting, the assessor must attend. MCPS does not currently employ any medical doctors. This provision would pose an additional burden on the school psychologists and social workers to attend additional meetings and take away from the time spent directly supporting student’s social, emotional and behavioral needs to access their educational programming.
 - The proposed legislation has the effect of causing a delay in the use of seclusion, when appropriate to avoid the risk of imminent harm or danger, by requiring school districts to obtain the authorization from a medical professionals. As school psychologists are assigned to multiple schools and social workers are limited to the schools with Social and Emotional Special Education Services (SESES) programs, they are not readily available to be onsite for observations.
 - HB1166 mandates that the school district rely upon the opinions of medical professionals when making educational decisions affecting the safety and well-being of students. Although licensed physicians, or psychologists, or clinical social workers are highly qualified in their respective professions, the language of the proposed legislation negates the knowledge, skills, and expertise of educational professionals already knowledgeable about the student and qualified in the use of appropriate positive behavioral supports and interventions. Restraint and seclusion is only used when necessary to protect a student, or other students, from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate. Crisis Prevention Institute training, which is provided for MCPS staff members, focuses on specific strategies to de-escalate behavior as an alternative to restraint and/or seclusion.

- The current legal requirements of COMAR13A.08.04.05(C)(2), “if restraint or seclusion is used for a student with a disability, and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team shall meet, in accordance with COMAR 13A.08.03, within 10 business days of the incident.” HB1166 requires that if the student’s behavior is adversely affected after being placed in seclusion, then the IEP team must convene an “at the earliest opportunity to discuss alternative behavioral health treatments.” This terminology is less specific than the current COMAR requirements. The lack of a finite period in which the IEP team meeting should be held prevents the schools staff, parents, and students (if age appropriate) from having clear expectations of when an IEP team is required to occur. It also affects the ability of the IEP team to appropriately coordinate schedules with the parent/guardian and all required IEP team members. Additionally, this requirement does not contemplate the intersection with the school district's legal requirement to provide all documentation to be discussed during the IEP team meeting five business days prior to the IEP team meeting. The same is true for the Pupil Personnel Meeting for general education students.
- HB1166 requires the Maryland State Department of Education (MSDE) to provide training to all administrators, teachers, behavioral support specialists, paraprofessionals, aids, or other personnel who directly work with the student. COMAR 13A.08.04.06(C)(1) already requires that “each public agency and nonpublic school shall provide professional development to designated school personnel.” As such, MCPS provides CPI training to designated staff members. The additional training to be provided by MSDE would be a duplication of the training already provided. Furthermore, to provide consistency of message, MCPS would continue with the strategies and interventions outlined in its purchased CPI training.

Position: Oppose

HB1322 Primary and Secondary Education - School Personnel - Prohibition on Retaliation for Not Returning to In-Person Instruction and Work

Sponsor Delegate Washington

Committee *Ways and Means*

Synopsis

Prohibiting the Governor, the State Superintendent of Schools, the State Board of Education, a county superintendent, and a county board of education from disciplining, suspending, terminating, or otherwise retaliating against school personnel who choose not to return to a school building for in-person instruction during the 2020–2021 school year; requiring the State Board and county boards to allow certain school personnel to instruct and work remotely to the extent practicable during the 2020–2021 school year; etc.

Analysis

The bill greatly expands the requirement to accommodate employees beyond the ADA without specificity. It allows a school-based employee to choose about returning to the school building. Further, it requires "accommodation" by the district but without limitation—no reference to reasonableness. Finally, from a practical standpoint, it only applies to the 2020–2021 school year, which would likely be almost over by the time the legislation was passed by both chambers and signed into law.

Position: Oppose

Equity

**HB1181 County Boards of Education - Accessibility Standards - Digital Tools (Nonvisual
SB0921 Access Accountability Act for Grades K-12 Education)**

Sponsors Delegate Guyton
 Senator Lam

Committees *Ways and Means*
 Education, Health, and Environmental Affairs

Synopsis

Requiring digital tools developed or purchased by a county board of education to include specifications for access by students with disabilities, including nonvisual access; requiring a county board to provide a student with disabilities access to digital tools that enable students with disabilities to acquire the same information and access the same services as students without disabilities; requiring each invitation for bids or request for proposals for a digital tool to require submission of an accessibility conformance report; etc.

Analysis

- MCPS is committed to access and opportunity for all students.
- Digitals tools have become an essential component of learning and most be accessible for students.
- This legislation honors MCPS values and commitment to equitable access for all.

Position: Support

**HB1355 Primary and Secondary Education – Repeating Previous Grade Level –
Authorization (Education Recovery Act of 2021)**

Sponsor Delegate Griffith

Committee *Rules and Executive Nominations*

Synopsis

On request of the student, parent, or guardian, authorizing certain students, regardless of the student's age or whether the student had completed all promotion or graduation requirements for the grade level the student seeks to repeat for the 2021–2022 school year, to repeat the grade level they were in during the 2020–2021 school year.

Analysis

The Office of Teaching, Learning, and Schools supports with amendments as stated below. The district is current working to refine existing retention practices specifically for COVID-19 related learning loss. A draft is in progress.

Under the current MCPS JEB-RA Regulation, *Placement, Promotion, Acceleration, and Retention of Students*, sets forth clear guidance about the role of the principal, parent, teacher, and student, when appropriate, in making retentions decisions. Essentially, JEB-RA Section E sets forth that the final responsibility rests with the principal except for students receiving special education services; retention decisions for these students are the responsibility of the Individualized Education Program (IEP) team. The principal is responsible for monitoring the decision. If the parent/guardian disagrees with the IEP decision, he or she has the right to appeal the decision according to legally mandated due process procedures. Retention decisions are made together with parents/guardians and, when appropriate, with the student.

Position: Support with Amendment

Amendment Language:

- Districts or the state would need to define “certain students.”
- Districts would need to hold some sort of EMT/Review process with school and family.
- Districts would need to attempt to recover learning loss through summer school, tutoring, etc.

HB1053 Operating Budget - Education Programs - Mandated Funding
SB0882

Sponsors Senator Guzzone
 Delegate B. Barnes

Committees *Budget and Taxation*
 Appropriations

Synopsis

Requiring the Governor to include in the annual budget bill for fiscal year 2023 an appropriation to each program under Funding for Educational Organizations equal to the greater of the funding the program received in fiscal year 2021 or 2022 and an additional \$150,000.

Analysis

This bill requires the governor to include an appropriation for FY 2023 for each program under the heading Funding for Educational Organizations equal to or greater than the amount in FY 2021 or FY 2022 plus \$150,000.

The organizations are (1) the Maryland School for the Blind, (2) Blind Industries and Services of Maryland, (3) State Aided Educational Institutions, (4) Aid for Nonpublic Schools, and (5) Broadening Options and Opportunities for Students Today.

The Governor’s FY 2022 budget proposal includes \$46.3 million for these organizations.

Position: Support

HB1275 Maryland Automobile Insurance Fund – Liability Insurance – School Bus Contractors

Sponsor Delegate Lisanti

Committee *Economic Matters*

Synopsis

Requiring the Maryland Automobile Insurance Fund to offer primary or supplemental coverage to certain applicants that provide school bus services to a county board of education; requiring the coverage to include certain minimum coverages and to equal or exceed the coverage provided to public contractors for school bus services in the county; and exempting coverage under the Act from a certain limitation.

Analysis

This bill only impacts school bus contractors and not system-owned transportation operations like MCPS. Also, since MCPS is self-insured, MAIF insurance is not used.

**HB1326 Maryland Healthy Working Families Act – Revisions and Public Health
SB0727 Emergency Leave**

Sponsors Senator Feldman
Delegate Dumais

Committees *Finance*
Economic Matters

Synopsis

Repealing the exemption from the Maryland Healthy Working Families Act for certain on-call employees; requiring employers to allow employees to use earned sick and safe leave during a public health emergency; requiring certain employers to provide employees certain earned sick and safe leave on the date that a public health emergency is declared or proclaimed for a jurisdiction; requiring an employer to provide certain earned sick and safe leave regardless of the employee's length of employment with the employer; etc.

Analysis

The bill codifies and expands the sick leave provisions from the federal *Families First Coronavirus Response Act* for Maryland employers. I do not see any significant concerns from a legal perspective, as it is more operational.
