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MSDE Headquarters

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Maryland State Department of Education

Response to the Analyst's Review and Recommendations

House Education & Economic Development Subcommittee –  
January 31, 2018  
Senate Education, Business & Administration Subcommittee –  
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**The Maryland State Department of Education (MSDE) welcomes this opportunity to share with the Committee some of its success stories and to address questions raised by the analyst.**

### **Personnel Data**

**MSDE should comment on how these vacancies impact its operations.**

The current number of position vacancies in the Department is not a concern. MSDE leadership is working to address this issue as strategically as possible. The programs noted in the analysis (the Juvenile Services Education Program, the Division of Rehabilitation Services, and the Division of Early Childhood Education) account for more than 70% of all MSDE positions and account for the majority of MSDE vacancies.

Vacancies in the Division of Rehabilitation Services ultimately mean fewer clients are served. On average, each Vocational Rehabilitation Counselor manages 150 active cases. MSDE recently received an exemption from the statewide hiring freeze for all Vocational Rehabilitation Counselor positions, which will significantly reduce the amount of time to fill vacant PINs.

The Disability Determination Services (DDS) is 100% federally funded through the Social Security Administration (SSA) as a cost reimbursement program. The current federal hiring freeze is the reason for the high level of vacancies, which in turn, is causing a backlog in the adjudication of Social Security Income and Social Security Disability Income claims. Of the 23 vacancies at DDS, 18 are VR Specialists/disability claims examiners, which equates to approximately 11,000 cases that are not being adjudicated by the State. If the federal hiring freeze were lifted, DDS is confident the vacant positions would be filled expeditiously.

The Division of Early Childhood Development (DECD) has experienced a recent leadership transition and expects that a renewed focus on strategic staffing will reduce the vacancies, many of which impact direct services to children in local child care facilities. MSDE also recently received an exemption from the statewide hiring freeze for all Child Care Licensing Specialists. This will help expedite the hiring process for these critical positions.

Because of recent recruitment efforts, the number of vacancies in the Juvenile Services Education Program has been reduced to 12, down from 29 one month ago. However, MSDE has experienced on-going challenges recruiting and retaining teachers despite targeted recruitment efforts, hiring incentives and retention bonuses. Currently, MSDE is considering more structural solutions, such as realigning the JSES school calendar with those used in other Maryland Local School Systems (LSS) to avoid the continual loss of staff to these jurisdictions.

Finally, MSDE has experienced on-going position reductions over the past 10 years. We have continued efforts to streamline and increase efficiencies within the Office of the Superintendent and across our divisions. While all of the position cuts are difficult, this is especially true when they impact direct services to our customers. It has become increasingly difficult to assume responsibility for new programs while experiencing a continual loss of PINs.

## **Decline in Employment Success for DORS Clients**

**MSDE should comment on why the rate and number of clients achieving employment declined in fiscal 2017.**

There are two main reasons for the decline in the number of clients achieving employment in fiscal 2017. The reauthorization of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) places extensive emphasis on the achievement of competitive integrated employment for individuals with disabilities. The Act also changes the employment outcomes that are allowable under the Vocational Rehabilitation (VR) program.

For an employment outcome to be considered competitive integrated employment, WIOA regulations require an employment outcome meet all three of the following criteria: (1) competitive earnings, (2) integrated location, and (3) opportunities for advancement. If an individual's employment fails to satisfy any one of these three components, the employment will not meet the definition of competitive integrated employment and will no longer be allowed under the VR program.

The U.S. Department of Education, Rehabilitation Services Administration (RSA), has determined that business settings established specifically for the purpose of employing individuals with disabilities are not integrated settings. RSA has determined that these set-aside jobs are not typically found in the competitive marketplace, and thus cannot be considered to meet the definition of competitive integrated employment. Prior to WIOA, such employment outcomes were allowable under the VR program.

Additionally, under the previous WIOA regulations, individuals needed to be employed for 90 days in order to be considered successfully rehabilitated. During that 90 day period, DORS could continue to provide substantial services. WIOA now requires individuals to be employed for 90 days without receiving substantial services from DORS. As a result, individuals are remaining with DORS for a longer period of time.

Finally, under WIOA 15% of the federal grant must be spent on students with disabilities who are in school and between the ages of 14 and 21. Redirecting funds to students with disabilities reallocates some of the dedicated funding and staff from the employment of individuals with disabilities.

## **Juvenile Services Education Program Funding**

**MSDE should comment on what factors are driving the increase in its reimbursable fund allowance for JSES in fiscal 2019. The Department of Legislative Services (DLS) recommends decreasing reimbursable funds for JSES in fiscal 2019 to correct for the discrepancy between DJS and MSDE.**

MSDE respectfully disagrees with the recommendation to decrease reimbursable funds for JSE in fiscal 2019.

MSDE has requested an increase in FY2019 Reimbursable Fund appropriation so that JSES has the approval to spend carryover funding from prior fiscal years. As noted in the analysis, JSES experienced a lag in reimbursements from Department of Juvenile Services (DJS). The requested increase in FY 2019 provides the authority to spend available reimbursable fund revenue. JSES has a number of renovation and expansion projects as well as technology and library upgrades that have been delayed. The increase in FY 2019 reimbursable funds will allow these projects to move forward.

DJS has subsequently changed its method of reimbursement to ensure that all funding that is due to JSES is paid prior to the close of the current fiscal year.

**MSDE should comment on why JSES has received an upward trend in reimbursable funds over time, the methodology in determining the split between MSDE and DJS in distributing funds received from LEAs, and how DJS uses the funds it retains.**

MSDE requests appropriation levels equal to the amount of reimbursable funding anticipated in the upcoming fiscal year based on prior year student enrollment and daily cost per student. The upward trend in reimbursable fund revenue in JSES is related to the anticipated reimbursable revenue attainment. The fiscal 2019 allowance includes appropriation to recognize carry over funds from prior years. MSDE expects DJS to fully reimburse fiscal 2018 funds to JSES prior to the close of the fiscal year.

The local basic cost (average expenditure of local and state funds for a non-disabled student) is used to calculate the daily cost per student. The local basic cost is divided by 260, the number of days that education programs operate in DJS facilities. Each LEA receives a quarterly invoice for the daily cost per pupil multiplied by the number of days the student(s) is in a DJS placement. DJS retains the local basic cost amount for students detained or committed in private residential per diem placements.

**MSDE should comment on what the cost implications would be should LEAs provide the educational program at some DJS facilities instead of JSES.**

MSDE has had preliminary discussions with Montgomery County Public Schools regarding the educational services provided to students at the Alfred D. Noyes Children's Center. MSDE is hopeful that future discussions could lead to expanded CTE options and improved transition between JSES and a student's home school.

It would be premature to estimate cost implications should LSSs provide education programming at DJS facilities. MSDE would not expect any cost implications in fiscal 2018 or fiscal 2019.

## **Every Student Succeeds Act**

**MSDE should update the committees on progress toward the implementation of Maryland's ESSA plan now that it has received approval.**

The MSDE recently submitted Maryland's Consolidated State Every Student Succeeds Act (ESSA) Plan to the U.S Department of Education (USED) which was accepted and approved on January 16, 2018. Maryland's plan will be implemented beginning with the 2018-2019 school year.

MSDE continues the work of developing the tools and resources needed to implement the approved ESSA plan. The State Board of Education will be actively involved in the implementation process. MSDE internal committees have been working on creating detailed implementation plans that delineate all activities within the plan to include goals, objectives and timeframes. The ESSA External Stakeholder Committee will continue to be updated and engaged in the plan as Maryland moves to the implementation phase.

Some of the activities that need to be completed prior to the start of the 2018-2019 school year include finalizing the State's accountability system, identifying schools in need of improvement, and working with LSSs to develop consolidated plans aligned to the State's ESSA plan.

## **BOOST and Aid to Nonpublic Schools**

**MSDE should update the budget committees on the status of its handbook review, and whether it has found that any nonpublic schools that have already been paid have been in conflict with the nondiscrimination requirements. It should also update the committees on what advice it has received on the possibility of being paid back for funds paid in past years to discriminating schools.**

MSDE is nearing completion of its review of handbooks for schools participating in the Broadening Options and Opportunities for Students Today (BOOST), Nonpublic Textbook and Technology, and Nonpublic Aging Schools programs to identify cases of discriminatory language that conflict with the Budget Bill requirements.

MSDE collected as many handbooks as possible from school web sites to review before the first batch of payments was sent on December 8, 2017. On December 19, 2017, schools were officially notified in a letter that their handbooks were being reviewed, and the letter requested that handbooks or other admissions documents be sent to MSDE. If any schools with discriminatory handbook language received payments in December 2017, then MSDE will collect the funds back from them. Because the payment process is lengthy and payments have to be processed in batches, the decision was made to review as many handbooks as possible and move forward with sending the first batch of payments in December so as to not penalize the schools – and by extension the students and parents – that were in full compliance and were waiting for payments.

Concerning collection of funds from prior years from schools with discriminatory handbook language, as noted in the analysis, the BOOST Advisory Board requested advice of counsel regarding this issue and will review that advice prior to making a recommendation.

**MSDE should update the budget committees on when it will make a decision regarding a nonpublic school's eligibility for the Nonpublic Textbook Program and the Nonpublic Aging Schools Program, and on what basis it will make its decision.**

The Nonpublic Textbook and Technology and Nonpublic Aging Schools programs have the same non-discrimination requirements as BOOST. The review of handbooks or other admissions documents is being conducted in the same manner and at the same time for all three programs. Due to the later timing of the Textbook and Aging Schools programs, schools had a chance to come into compliance before they applied and agreed to program requirements. The deadlines to apply for the 2017-2018 Textbook and Aging Schools programs were in December 2017.

If a school was found to have discriminatory language in its handbook, and the school indicated to MSDE that it wanted to bring its handbook into compliance, then MSDE required the school to provide a copy of the revised handbook and evidence that the revised handbook was distributed to parents. Such evidence of distribution could include an email sent to parents or a letter sent to parents.

***DLS Recommended Actions:***

- 1. DLS recommends that all language regarding the distribution of funds for the Aid to Nonpublic Schools Program be added to the fiscal 2019 allowance as updated from the fiscal 2018 budget bill;**

MSDE concurs with the language.

- 2. DLS recommends that all language requiring schools participating in the Aid to Nonpublic Schools Program to not discriminate in employment or student admissions be added to the fiscal 2019 allowance to match the fiscal 2018 budget bill;**

MSDE concurs with the language.

- 3. DLS recommends language from the fiscal 2018 budget bill regarding provisions for eligibility to participate in the BOOST program be restored;**

MSDE concurs with the language.

- 4. DLS recommends that no awards be made for the BOOST program after March 1, 2018, and that all remaining funds be encumbered to be available for the BOOST program for the 2018-2019 school year;**

MSDE respectfully disagrees with this recommendation because more time is needed to determine possible additional awards and to process the next batch of payments.

The agency is still completing its review of participating school handbooks to ensure that no schools with discriminatory language receive payments, and the BOOST Advisory Board must be informed of the outcome of the handbook review. Also, MSDE has been working to resolve enrollment and payment issues related to the first batch of payments issued in December 2017. The data obtained from these efforts will determine whether possible additional awards can be made.

- 5. DLS recommends that all reporting requirements in the fiscal 2018 budget bill for the BOOST Program be restored in the fiscal 2019 budget bill; and**

MSDE concurs with the language.

- 6. DLS recommends level funding the BOOST program's fiscal 2019 appropriation at \$5.5 million in special funds.**

MSDE respectfully disagrees with this recommendation.