

## REMOVE PREFERENCE IN SPECIAL EDUCATION HIRING

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**House Bill 5796 as reported from committee w/o amendment**  
**Sponsor: Rep. Phil Potvin**  
**Committee: Education**  
**Complete to 11-17-16**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 429 of 2016)*

**BRIEF SUMMARY:** House Bill 5796 would repeal Section 1766 of the Revised School Code (Public Act 451 of 1976), which currently provides employment preference for certain school personnel in special education programs and services. Under this bill, this employment preference (as described below) would be removed.

**FISCAL IMPACT:** This bill would have no direct fiscal impact on the state, but it could have an indeterminate fiscal impact for school districts and public school academies (PSAs). In removing Section 1766, the school district or PSA would be able to make independent decisions regarding hiring, compensation, and benefits for special education personnel, which could allow them to reduce costs. The state is required to reimburse districts for approximately 28.6% of all special education costs, so a reduction in local costs could result in state savings as well.

### **THE APPARENT PROBLEM:**

The hiring preference addressed by this bill was implemented in 1974 for the following reasons, as described in the analysis for the bill instituting the preference:

P.A. No. 198 of 1971 mandated the formation of special education programs by every intermediate school district in Michigan. This formation has, in some instances, necessitated the transfer of previously existing special education programs from one administrative unit to another with the result that some special education personnel are now unemployed. In addition, the transfer of handicapped persons from state institutions to community programs has caused the dismissal of teachers in these state institutions. Some persons believe that intermediate and constituent school districts should be required to re-employ laid off personnel before employing additional special education personnel.

In effect, this preference was implemented to ensure that special education personnel would be protected in spite of the large-scale reorganization of special education programs in Michigan. However, this reorganization occurred 40 years ago, so this section may have outlived its usefulness.

### **THE CONTENT OF THE BILL:**

House Bill 5796 would repeal Section 1766 of the Revised School Code, which provides hiring preference for certain school personnel in special education programs.

***Law to be repealed***

Currently, Section 1766 requires the board of a constituent district which is hiring additional personnel in order to implement special education programs and services, to employ an employee of the intermediate school district (ISD) in which it is located, whose program or service is being discontinued, before considering other applicants. It also provides that all rights and benefits owed to the special education personnel when they worked for the constituent school district transfer with them to the ISD.

These formerly-ISD, now-constituent district personnel are also currently entitled to all rights and benefits described in the Teachers' Tenure Act (MCL 38.71 to 38.191), which includes provisions on qualifications as a teacher; a probationary period as a teacher; discharge, demotion, or retirement; suspension; resignation or leave of absence; and the responsibilities of the state tenure commission; except that the controlling board of the ISD may subject the personnel to another probationary period of one year. This section does not apply when the affected person is covered under an agreement which provides substantially the same benefits.

MCL 380.1766

***ARGUMENTS:***

***For:***

While this section may have been beneficial when it was implemented 40 years ago, say critics, it no longer serves the best interest of children or schools. According to testimony, there is no provision that a hiring district is only required to hire laid-off teachers in the appropriate specialty. Therefore, a special education teacher who works with emotionally impaired high school students may be laid off and rehired because of the preference to work with cognitively impaired preschoolers. It is hard to imagine that the needs of the children are best served by hiring personnel with potentially inapplicable or insufficient training and experience rather than hiring the candidate best suited for the job.

***Against:***

Opponents argued that if an ISD discontinues a special education program, and the responsibility for the children in those programs is transferred to the constituent districts, it only makes sense that the personnel who had worked with those children at the ISD level should be given preference in working with them on a district level. If existing staff is sufficient to handle the influx of students, there is no requirement to hire additional staff. However, it seems reasonable that the personnel displaced by the end of a program should have priority in continuing to work with the students who were likewise displaced.

***Response:***

By definition, ISDs consist of numerous schools. If a special education program is discontinued at an ISD, there is no assurance that the next constituent district in that ISD hiring special education personnel will be hiring for the same specialty, or will have inherited the same children, as the personnel dealt with at the ISD-level.

Removal of this section would not remove laid-off personnel from consideration. Instead, it would ensure that the best candidate for the job is selected, regardless of preference. That candidate may well be the recently-laid off special education professional from a nearby school or district that the section currently favors.

***POSITIONS:***

A representative of DeWitt Public Schools testified in support of the bill. (9-22-16)

A representative of Ovid-Elsie Area Schools testified in support of the bill. (9-22-16)

Oakland Schools supports the bill. (9-22-16)

Michigan Association of School Boards supports the bill. (9-22-16)

A representative of the Michigan Education Association testified in opposition to the bill. (9-22-16)

Macomb Intermediate School District opposes the bill. (9-22-16)

Michigan Association of Intermediate School Administrators opposes the bill. (11-10-16)

ESA Legislative Group opposes the bill. (11-10-16)

Barry, Branch, Calhoun, Jackson, Lenawee, and Monroe ISDs oppose the bill. (11-10-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.