

# Legislative Analysis



## REMOVE PREFERENCE IN SPECIAL EDUCATION HIRING

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**House Bill 4166 as reported from committee w/o amendment**  
**Sponsor: Rep. Mary Whiteford**  
**Committee: Education Reform**  
**Complete to 4-12-17**

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

*(Enacted as Public Act 159 of 2017)*

**BRIEF SUMMARY:** House Bill 4166 would repeal Sections 1742 and 1743 of the Revised School Code (Public Act 451 of 1976), which currently provides an 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 intermediate school districts. In removing Sections 1742 and 1743, the intermediate school district 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 intermediate school districts for a share of all special education costs, so a reduction in local costs could result in state savings as well.

### **THE APPARENT PROBLEM:**

Public Act 429 of 2016 (House Bill 5796) repealed Section 1766 of the Revised School Code, which had provided the inverse preference—in other words, while Sections 1742 and 1743 require an ISD to give an employment preference to personnel who had been employed in a discontinued special education program or service at a constituent district or state agency in the ISD, Section 1766 required a constituent district to give an employment preference to personnel who had been employed in a discontinued special education program or service at the ISD in which it is located.

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.... 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 about 40 years ago.

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

The bill would repeal Sections 1742 and 1743 of the Revised School Code, which would remove the hiring preference for displaced special education personnel, as described below.

### ***Law to be repealed***

Currently, Section 1742 requires the board of an intermediate school district (ISD) which is hiring additional personnel in order to implement special education programs and services, to employ an employee of a ***constituent district*** whose special education 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.

Similarly, Section 1743 provides that an ISD which will be providing special education programs and services that were previously provided by a ***state agency*** in the ISD must, before hiring additional personnel, hire a person who worked for a state agency and who no longer does so because a state agency discontinued a special education program or service for which the person was employed.

These now-ISD personnel who were once employed by a constituent district or state agency 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.

## ***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 on the related House Bill 5796 in 2016 (described above), 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 may argue that if a constituent district or state agency discontinues a special education program, and the responsibility for the children in those programs is transferred to the ISD, it only makes sense that the personnel who had worked with those children at the local level should be given preference in working with them on the ISD 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:***

Removal of this section would not remove laid-off personnel from consideration. Instead, it would increase the likelihood 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 constituent district or state agency that the section currently favors.

***POSITIONS:***

A representative of the Allegan Area Educational Service Agency testified in support of the bill. (3-23-17)

The following organizations support the bill:

- Michigan Association of School Boards (3-23-17)
- Oakland Schools (3-23-17)
- ESA Legislative Group (3-23-17)
- Michigan Association of School Administrators (3-23-17)
- Barry, Branch, Calhoun, Jackson, Lenawee, and Monroe ISDs (3-30-17)

The Michigan Education Association opposes the bill. (3-23-17)

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