

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 724
 Ways and Means

(Delegate Guyton)

Special Education - Education and Vocational Services - Prolonged School Closure

This emergency bill requires a local board of education to enroll a specified special education student whose school is subject to a prolonged school closure in continuing school classes and any education services due to the student for a period of time commensurate with the prolonged school closure, beginning from the date that closure ends. The local board must extend the classes and services regardless of whether (1) the student has completed all high school graduation requirements and (2) the student’s anticipated high school graduation has passed. The local board must notify the parent of the student of the enrollment and services and offer the student or parent the opportunity to opt-out.

Fiscal Summary

State Effect: General fund expenditures increase in FY 2021 by approximately \$10.4 million to immediately begin providing extended special education services due to COVID-19 school closures, as discussed below. General fund expenditures further increase by \$29.7 million in FY 2022 to cover the remainder of approximately one year of extended services. To the extent schools were closed to in-person instruction for less than a year for students impacted by the bill, costs decrease proportionally. Future costs will depend upon the frequency and duration of prolonged school closures that cannot be determined.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|----------------|----------------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 10,413,100 | 29,739,300 | - | - | - |
| Net Effect | (\$10,413,100) | (\$29,739,300) | (-) | (-) | (-) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local school systems incur significant additional special education and related costs in FY 2021 and 2022, as described below. Future year costs depend on the timing and duration of any future prolonged school closure. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Small businesses that provide related services may benefit.

Analysis

Bill Summary: The bill applies to a student who is at least 17 years old and under the age of 22 who has a disability and receives special education services who is enrolled in a local school system. A prolonged school closing is defined as a period of 10 or more consecutive school days during which, for an eligible student, a school is (1) not fully open for attendance, (2) open for attendance for fewer hours than a six-hour school day, or (3) open for attendance for fewer than a five-day school week.

The Division of Rehabilitation Services (DORS) in the Maryland State Department of Education (MSDE) must ensure that a transitioning student whose school is subject to a prolonged school closure and is receiving extended learning under the bill has access to the services for a period of time commensurate with the prolonged closure.

The local board must ensure that students enrolled under the bill have access to specified appropriate services by coordinating with the Developmental Disabilities Administration (DDA); DORS; and other providers. The State Board of Education must develop regulations regarding the local boards' obligations under the bill.

Current Law:

Individualized Education Programs

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an individualized family service plan (IFSP) or individualized education program (IEP) specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities age 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

During school closure, the IEP team should be convened by teleconference or other means to address the student's needs (including initial, annual, or reevaluation IEP team meetings) if the school-based members of the IEP team have the data needed to make decisions. IDEA states that when conducting IEP team meetings, the parent and the public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Nonpublic Placements

The State and local governments share in the costs of nonpublic placements for special education children who cannot receive an appropriate education in public school. For those children in nonpublic placements approved by MSDE, the county contributes an amount equal to the local share of the basic cost of educating a child without disabilities plus two times the total basic cost. Any costs above this base amount are split on a 70% State/30% local basis.

Annual Public School Days and Hours Minimum Requirements

Public schools must be open for at least 180 days *and* 1,080 school hours at elementary and middle schools or 1,170 hours at high schools during a 10-month period. However, a local board of education may apply to the State Board of Education for a waiver from these provisions of State law; the application must describe a demonstrated effort by the local board to comply with State law and that the school system calendar included from 3 to 10 days to be used to make up days lost. In response, the State board may permit:

- increases or decreases in the length of the school year;
- exceptions from the 10-month period requirement;
- adjustments in the length of the school day; and
- schools to be open on holidays.

These adjustments may be granted only if normal school attendance is prevented because of natural disaster, civil disaster, or severe weather conditions. After any school system closure, the local school system must notify the State board, within 10 days of reopening,

of its plan to make up the missed school days, including the dates of the make-up days. Education funding from the State or local sources may not be reduced if there are fewer than 180 school days in any year because of an approved application to the State Board of Education for a decrease in the length of the school year.

The local school boards for Baltimore City and Allegany, Anne Arundel, Calvert, Howard, Montgomery, and Prince George's counties may elect to operate one or more schools on a year-round basis if the 180-day and minimum hour requirements are met. Again, State and local education funding may not be reduced if there are fewer than 180 days in any year and a State board waiver was granted allowing for a decrease in the length of the school year.

Chapter 13 of 2019 requires each local board of education to set start and end dates each year for public schools in the county, effectively repealing any law prohibiting a local board from beginning or ending its school year before or after a certain date.

COVID-19 State of Emergency and School Closures

The Governor declared a state of emergency and catastrophic health emergency on March 5, 2020, to control and prevent the spread of COVID-19 within the State. On March 12, 2020, the State Superintendent of Schools directed public schools in Maryland to be closed from March 16, 2020, through March 27, 2020, to reduce the threat to human health caused by transmission of COVID-19 in Maryland and to protect and save lives. In response to these closures, the Maryland State Board of Education authorized the State Superintendent to waive up to five days of student attendance for Maryland public schools for the 2019-2020 school year, upon the request of a local superintendent of schools on behalf of a school system.

State Expenditures: This analysis assumes that while prolonged school closures have occurred over the past year as a result of the COVID-19 pandemic that this will not be the case in all future years or for all local school systems. Thus, the addition of permanent staff positions is not assumed. This analysis further assumes that students receiving extended services under the bill do not count toward full-time equivalent enrollment or special education enrollment counts for the purpose of determining State aid to public schools and, thus, State aid expenditures are not affected.

However, it is assumed that the State incurs additional nonpublic placements costs totaling \$34.8 million for eligible students to receive an additional full year of services under the bill. These costs are assumed to be incurred beginning immediately upon the reopening of schools that the Governor and State Superintendent of Schools have asked school systems to do by March 1, 2021. Assuming many schools reopen in March, and excluding the 10-day period of statewide school closures in March 2020, approximately one-quarter of

the full-year cost is incurred in fiscal 2021 and the remainder in fiscal 2022. To the extent that some eligible students may have attended school in-person for a portion of the year, costs decrease. For example, every 10 days of in-person school will save approximately \$1.9 million in State nonpublic placement costs.

MSDE further estimates that nearly 3,700 students would be eligible due to prolonged COVID-19 closures for DORS extended services at an annualized cost of approximately \$4.8 million. These costs are assumed to be split as discussed above, 25% in fiscal 2021 and 75% in fiscal 2022. Every 10 days of in-person school reduces these additional costs by approximately \$270,000.

MSDE also estimates it will incur approximately \$500,000 in general fund costs for the Maryland On-Line IEP System and database updates in fiscal 2021.

The bill specifically requires local boards of education to provide the extended classes and services. Therefore, it is assumed that the bill does not apply to other State entities that serve special education students, such as the Maryland School for the Deaf (the Maryland School for the Blind is not a State entity) or the Department of Juvenile Services, since those students are not enrolled in a public school system. This analysis also assumes that any additional DDA expenditures under the bill are not specifically required.

Local Fiscal Effect: MSDE advises that local school systems will incur significant costs to meet requirements of the bill, including staffing and transportation expenses. To the extent that additional funding is not provided, current staff will take on additional responsibilities and class sizes may increase. The bill may also result in added costs associated with increasing physical space for provision of services. MSDE further advises that unlike for those who must under federal law receive special education and related services, the related services for those receiving extended education under the bill will not be eligible for federal reimbursements. Below are estimates based upon local school system responses due to the COVID-19 school closures and potentially any future prolonged school closures. As discussed above, a portion of these costs will be incurred in fiscal 2021. To the extent eligible students have been attending in-person school for a portion of the year, which varies significantly among the school systems, costs are proportionally less.

Baltimore City Public Schools anticipates an additional annualized cost of \$10.0 million due to COVID-19 school closures, or \$555,600 per 10 days of prolonged school closure based upon the need to provide specially designed instruction to eligible students in both public and nonpublic placements. Prince George's County Public Schools (PGCPS) anticipates additional costs related to additional service time for special education teachers, paraeducators, and related service providers. PGCPS anticipates annualized costs of approximately \$3.3 million, or \$185,300 per 10 days of prolonged school closure with additional annualized cost of \$1.0 through \$2.3 million for nonpublic placements.

This analysis assumes that students receiving additional services under the bill do not count toward full-time equivalent enrollment or special education enrollment counts for the purpose of determining State aid to public schools and, thus, local revenues from the State are not affected and, thus, do not provide support for additional services under the bill. Furthermore, this analysis assumes that local appropriations associated with providing additional services under the bill will be excluded from the calculation of required minimum local effort in the subsequent year, so there is no impact on maintenance of effort calculations.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 209 (Senator Peters) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City Public Schools; Prince George's County Public Schools; Maryland State Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2021
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