

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 209 (Senator Peters)
 Education, Health, and Environmental Affairs

Special Education - Prolonged School Closure - Extension of Education Services

This emergency bill requires a local board of education to offer and provide a specified special education student whose school is subject to a prolonged school closure the option to continue attending school or receiving education services after the student’s anticipated graduation date, regardless of whether the student has completed all high school graduation requirements. The local board must notify the parent of the student of this option. 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 one year from the end of the prolonged closure.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$40.1 million for MSDE expenditures to cover one year of extended special education services due to COVID-19 school closures, or any future year following a prolonged school closure, as described below; these costs are shown in FY 2022, but some portion of these funds may reimburse expenditures incurred in FY 2021 since it is an emergency bill. Similar amounts may be required by the bill in future years, if there are prolonged school closures Statewide, but the timing cannot be determined.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	40,127,300	-	-	-	-
Net Effect	(\$40,127,300)	(-)	(-)	(-)	(-)

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 2022, and any future year that follows a prolonged school closure, as described below. **This bill imposes 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 local board must coordinate with DORS to ensure that an eligible or transitioning student receiving an extension under the bill has access to transition services. The State Board of Education must develop regulations regarding the local boards' obligations under the bill.

In a case arising from deprivation of a free appropriate public education because of a prolonged school closure, the court may reduce the award of compensatory education by the value of the extended learning provided 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.

Dispute Resolution

Chapter 233 of 2006 established a Maryland process for resolution sessions that can be used to settle disputes about the identification, evaluation, and educational placements of children with disabilities, consistent with IDEA provisions for dispute resolution. Before conducting a due process hearing, the parent must have an opportunity to resolve a due process complaint at a resolution session.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child's special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. (Public agencies include MSDE, local school systems, the Maryland School for the Blind, the Maryland School for the Deaf, and any other State agency responsible for providing education to students with disabilities.) A parent of a child with disabilities may file a due process complaint with the Office of Administrative Hearings (OAH) and the public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The

decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

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, 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 placement costs, with the State share estimated by MSDE at approximately \$34.8 million in fiscal 2022 as a result of COVID-19 school closures.

MSDE further estimates that DORS will provide extended services to nearly 3,700 students in fiscal 2022 as a result of the prolonged school closures due to COVID-19, at a cost of approximately \$4.8 million. MSDE advises that these costs will not be eligible for federal Pre-Employment Transition Services payment under the Vocational Rehabilitation Act; therefore, they will be general fund expenditures.

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

In total, MSDE expenditures total an estimated \$40.1 million in fiscal 2022 for costs under the bill related to COVID-19 school closures and in any future year following prolonged school closures statewide. All of these costs are assumed to be funded in fiscal 2022; however, since it is an emergency bill, some costs may be incurred in fiscal 2021 depending on when the extended services begin to be provided. To the extent that some local school systems may not have provided six hours of schooling per day and/or five days per week in the 2020-2021 school year, expenditures may be higher (as much as double if all public schools in every school system were considered closed) if the bill requires a second year of extended special education services to be provided.

Exhibit
MSDE Expenditures under the Bill Related to COVID-19 Closures

Nonpublic Placements	\$34,789,682
DORS	4,837,570
Database Updates	500,000
Total	\$40,127,252

DORS: Division of Rehabilitation Services
MSDE: Maryland State Department of Education

The bill specifically requires local boards of education to provide the extended 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.

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 for fiscal 2022 due to the COVID-19 school closures, and potentially any year following prolonged school closure, based upon responses from some local school systems. As described above, some of these costs may be incurred in fiscal 2021 depending on when extended services begin; and potentially could be higher if there were additional prolonged school closures in the 2020-2021 school year.

Anne Arundel County Public Schools (AACPS) advises that based on the number of special education youth between the age of 17 and 21 in the county, approximately 870 students may receive an additional year of services due to the COVID-19 prolonged closure, thus, necessitating the addition of approximately 75 teaching and related services personnel, at a cost of \$6.0 million for that additional year. AACPS and other school systems may incur other related costs, including additional transportation costs.

Montgomery County Public Schools assumes approximately 10% of eligible youth will opt into an additional year of educational and related services and, thus, an additional

33 special education teachers, paraeducators, and related personnel will be required, at total cost of \$2.8 million. Prince George's County Public Schools anticipates \$3.3 million in costs to cover additional special education teachers, paraeducators, and related personnel in fiscal 2022 (and any year following prolonged school closure), as well as \$2.3 million in additional nonpublic placement costs. Baltimore City Public Schools anticipates an additional cost of \$10.0 million in years impacted by the bill.

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 an additional year of 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: HB 724 (Delegate Guyton) - Ways and Means.

Information Source(s): Baltimore City Public Schools; Anne Arundel County Public Schools; Frederick County Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland School for the Deaf; Office of Administrative Hearings; Department of Legislative Services

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