

SENATE BILL 209

F1, D3

EMERGENCY BILL
(PRE-FILED)

1lr1345
CF 1lr1343

By: **Senator Peters**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Special Education – Prolonged School Closure – Extension of Education**
3 **Services**

4 FOR the purpose of requiring a county board of education to offer and provide to certain
5 students whose school is subject to a prolonged school closure an option to continue
6 attending school or receiving education services after the student's anticipated
7 graduation date; requiring a county board to provide a certain notice to the parents
8 or guardians of certain students; requiring a county board to offer and provide a
9 certain extension to certain students under certain circumstances; requiring a
10 county board to coordinate with the Division of Rehabilitation Services within the
11 State Department of Education to ensure that certain students have access to certain
12 services; authorizing a court to reduce a certain award by a certain value for special
13 education services provided in a due process case arising under certain
14 circumstances; requiring the Division to ensure that certain transitioning students
15 continue to have access to certain services for a certain period of time; defining
16 certain terms; making this Act an emergency measure; and generally relating to
17 extended education services for special education students who are experiencing a
18 prolonged school closure.

19 BY adding to

20 Article – Education

21 Section 8-404.1

22 Annotated Code of Maryland

23 (2018 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Education

26 Section 8-413 and 21-305

27 Annotated Code of Maryland

28 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Education**

4 **8-404.1.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) “ELIGIBLE STUDENT” MEANS A CHILD WHO:

8 (I) HAS A DISABILITY;

9 (II) RECEIVES SPECIAL EDUCATION SERVICES; AND

10 (III) IS AT LEAST 17 YEARS OLD AND UNDER THE AGE OF 22
11 YEARS.

12 (3) “PROLONGED SCHOOL CLOSURE” MEANS A PERIOD OF TIME OF 10
13 CONSECUTIVE SCHOOL DAYS OR MORE, DURING WHICH THE SCHOOL IS:

14 (I) NOT FULLY OPEN FOR ATTENDANCE BY AN ELIGIBLE
15 STUDENT;

16 (II) OPEN FOR ATTENDANCE BY AN ELIGIBLE STUDENT FOR
17 FEWER HOURS THAN A 6-HOUR SCHOOL DAY; OR

18 (III) OPEN FOR ATTENDANCE BY AN ELIGIBLE STUDENT FOR
19 FEWER DAYS THAN A 5-DAY SCHOOL WEEK.

20 (B) (1) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
21 COUNTY BOARD SHALL OFFER AND PROVIDE AN ELIGIBLE STUDENT WHOSE SCHOOL
22 IS SUBJECT TO A PROLONGED SCHOOL CLOSURE THE OPTION TO CONTINUE
23 ATTENDING SCHOOL OR RECEIVING EDUCATION SERVICES AFTER THE ELIGIBLE
24 STUDENT’S ANTICIPATED GRADUATION DATE.

25 (II) A COUNTY BOARD SHALL NOTIFY THE PARENT OR
26 GUARDIAN OF AN ELIGIBLE STUDENT OF THE STUDENT’S OPTION TO CONTINUE
27 ATTENDING SCHOOL OR RECEIVING EDUCATION SERVICES UNDER SUBPARAGRAPH
28 (I) OF THIS PARAGRAPH.

29 (2) A COUNTY BOARD SHALL OFFER AND PROVIDE AN EXTENSION

1 UNDER PARAGRAPH (1) OF THIS SUBSECTION TO EACH ELIGIBLE STUDENT
2 REGARDLESS OF WHETHER THE STUDENT HAS COMPLETED ALL HIGH SCHOOL
3 GRADUATION REQUIREMENTS.

4 (C) A COUNTY BOARD THAT PROVIDES AN EXTENSION UNDER SUBSECTION
5 (B) OF THIS SECTION SHALL COORDINATE WITH THE DIVISION OF REHABILITATION
6 SERVICES TO ENSURE THAT THE ELIGIBLE OR TRANSITIONING STUDENT HAS
7 ACCESS TO TRANSITION SERVICES IN ACCORDANCE WITH § 21–305 OF THIS ARTICLE
8 DURING THE EXTENSION PERIOD.

9 (D) THE STATE BOARD SHALL ADOPT REGULATIONS TO CARRY OUT THIS
10 SECTION.

11 8–413.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) “Administrative law judge” means an individual serving in the role of
14 an impartial hearing officer as required under the federal Individuals with Disabilities
15 Education Act.

16 (3) “Due process complaint” means a written request for a due process
17 hearing filed by the parent of a child with a disability, as defined in § 8–412 of this subtitle,
18 or a public agency, to resolve a dispute over the identification, evaluation, educational
19 placement, or the provision of free appropriate public education, in accordance with federal
20 law.

21 (4) “Federal law” means the Individuals with Disabilities Education Act
22 and regulations adopted under that Act.

23 (5) “Parent” means:

24 (i) A child’s natural or adoptive parents, a guardian, or a person
25 acting as a parent of a child, such as a relative or a stepparent with whom the child lives;

26 (ii) A foster parent with whom a child lives if the foster parent has
27 been granted limited guardianship for educational decision making purposes by the court
28 that placed the child in foster care;

29 (iii) Another individual who is legally responsible for the child’s
30 welfare; or

31 (iv) A parent surrogate appointed in accordance with § 8–412 of this
32 subtitle.

33 (6) “Public agency” means the State Department of Education, a local

1 school system, or any State agency responsible for providing education to students with
2 disabilities, including the Maryland School for the Blind and the Maryland School for the
3 Deaf.

4 (7) "Resolution session" means a preliminary meeting the public agency
5 shall convene with the child's parent in accordance with federal law.

6 (b) (1) The parent of a child with a disability or a public agency may formally
7 request mediation at any time to resolve any disagreement between the parties regarding
8 the child's special education services or program.

9 (2) If a parent files a due process complaint against a public agency
10 concerning the identification, evaluation, or educational placement of a student or the
11 provision of a free appropriate public education, any party shall be given the opportunity
12 to request mediation of those aspects of the decision subject to dispute.

13 (3) The request for mediation may not be used to deny or delay the parent's
14 rights under federal law or this section.

15 (4) Any party to the mediation has the right to be accompanied and advised
16 by counsel.

17 (5) Mediation shall be conducted in accordance with departmental
18 regulations.

19 (6) A mediation agreement shall be in writing and is enforceable in a court
20 of competent jurisdiction in accordance with federal law.

21 (7) The Department shall make a staff member available to assist a parent
22 in understanding the mediation process.

23 (c) (1) Before conducting a due process hearing in accordance with subsection
24 (d) of this section, the public agency shall provide the parent with an opportunity to resolve
25 the due process complaint at a resolution session in accordance with federal law.

26 (2) A resolution session agreement shall be in writing and enforceable in a
27 court of competent jurisdiction in accordance with federal law.

28 (3) A written resolution agreement may be voided by the parties within 3
29 business days of execution in accordance with federal law.

30 (d) (1) A parent of a child with disabilities shall file a due process complaint
31 with the Office of Administrative Hearings and the public agency.

32 (2) A public agency shall file a due process complaint with the Office of
33 Administrative Hearings and the parent.

1 (3) Except as provided in paragraph (4) of this subsection, the complaining
2 party shall file a due process complaint within 2 years of the date the party knew or should
3 have known about the action that forms the basis of the due process complaint.

4 (4) The statute of limitations described under paragraph (3) of this
5 subsection does not apply to a parent who is prevented from requesting a due process
6 hearing due to:

7 (i) Specific misrepresentations made by the public agency that it
8 had resolved the problem that formed the basis of the due process complaint; or

9 (ii) The public agency's withholding of information that the public
10 agency was required to provide to the parent.

11 (5) In order to conduct a hearing, the Office of Administrative Hearings
12 shall appoint an administrative law judge who:

13 (i) Is an administrative law judge in the Office of Administrative
14 Hearings; and

15 (ii) Meets the requirements of a due process hearing officer in
16 accordance with federal law.

17 (6) Unless the parent and the public agency otherwise agree, during the
18 course of any administrative or judicial proceeding, the child must remain in the last
19 approved placement in accordance with federal law.

20 (7) If the hearing concerns the initial admission of a child into a public
21 school, the child with the consent of the parent must be placed in the public school program
22 until the proceedings have been completed.

23 (e) (1) The administrative law judge appointed under subsection (d) of this
24 section shall conduct the hearing in accordance with federal law, Title 10 of the State
25 Government Article, and the Office of Administrative Hearings Rules of Administrative
26 Procedure, and may:

27 (i) After review of the educational records of the child, dismiss any
28 request for review which does not relate to a matter described in subsection (d)(1) of this
29 section;

30 (ii) Require the parties to attend a prehearing conference prior to the
31 due process hearing;

32 (iii) Hear any testimony that it considers relevant;

33 (iv) Require an independent evaluation or call an impartial expert
34 witness in the diagnosis or education of students with disabilities whose testimony shall be

1 on the record and whose costs shall be paid by the State Education Agency; and

2 (v) Administer oaths to witnesses at the hearing on request of a
3 party.

4 (2) The provisions of the Family Educational Rights and Privacy Act and
5 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

6 (3) If the parties cannot agree on an impartial expert witness, each party
7 shall be given the opportunity to submit a list of possible experts, and the administrative
8 law judge shall decide which impartial expert witness to call.

9 (f) (1) Any party to the hearing has the right to:

10 (i) Be accompanied and be advised by counsel and individuals with
11 special knowledge or training with respect to the problems of children with disabilities;

12 (ii) Present evidence and confront, cross-examine, and compel the
13 attendance of witnesses;

14 (iii) Prohibit the introduction of any evidence at the hearing which
15 has not been disclosed to all parties at least 5 days before the hearing;

16 (iv) Obtain a written or electronic verbatim record of the hearing; and

17 (v) Obtain written findings of fact and decisions.

18 (2) Parents involved in the hearings must be given the right to:

19 (i) Have the child who is the subject of the hearing present; and

20 (ii) Open the hearing to the public.

21 (g) (1) The decision of the administrative law judge shall be made on
22 substantive grounds based on the determination of whether the child received a free
23 appropriate public education.

24 (2) In matters alleging a procedural violation, an administrative law judge
25 may find that the child did not receive a free appropriate public education only if the
26 procedural inadequacies:

27 (i) Impeded the child's right to a free appropriate public education;

28 (ii) Significantly impeded the parents' opportunity to participate in
29 the educational decision making process regarding the provision of a free appropriate public
30 education to the parents' child; or

1 (iii) Caused a deprivation of educational benefits.

2 (h) The hearing shall be held and a written decision shall be issued within the
3 time periods established by federal law. The administrative law judge may grant a specific
4 extension of time at the request of either party.

5 (i) If, at the time of the due process complaint, the child who is the subject of the
6 hearing is not enrolled and attending an approved educational program or, if the due
7 process complaint is over the placement or manifestation determination of a child, due to a
8 violation of the rules of conduct, an expedited hearing shall occur within 20 school days of
9 the date the hearing is requested and shall result in a decision within 10 school days of the
10 hearing.

11 (j) Within 120 calendar days of the issuance of the hearing decision, any party to
12 the hearing may file an appeal from a final decision of the Office of Administrative Hearings
13 to the federal District Court for Maryland or to the circuit court for the county in which the
14 child resides.

15 (k) (1) A public agency is not required to pay for the cost of education,
16 including special education and related services, for a child with a disability at a private or
17 nonpublic school if the public agency made a free appropriate public education available to
18 the child and the parent of the child elected to place the child in such a school or facility.

19 (2) If the parent of a child with a disability, who previously received special
20 education and related services under the authority of a public agency, enrolls the child in
21 a nonpublic school or facility without the consent of or referral by the public agency, an
22 administrative law judge or a court may require the public agency to reimburse the parent
23 for the costs of the placement enrollment if the administrative law judge or court
24 determines that the public agency had not made a free appropriate public education
25 available to the child in a timely manner prior to that enrollment.

26 (3) Reimbursement may be reduced or denied by the administrative law
27 judge or court in accordance with federal law.

28 **(L) (1) IN THIS SUBSECTION, "PROLONGED SCHOOL CLOSURE" HAS THE**
29 **MEANING STATED IN § 8-404.1 OF THIS SUBTITLE.**

30 **(2) IN A CASE ARISING FROM DEPRIVATION OF A FREE APPROPRIATE**
31 **PUBLIC EDUCATION FOR AN ELIGIBLE OR TRANSITIONING STUDENT BECAUSE OF A**
32 **PROLONGED SCHOOL CLOSURE, THE COURT MAY REDUCE AN AWARD OF**
33 **COMPENSATORY EDUCATION BY:**

34 **(I) THE VALUE OF EXTENDED LEARNING PROVIDED TO THE**
35 **ELIGIBLE STUDENT BY A COUNTY BOARD UNDER § 8-404.1 OF THIS SUBTITLE; AND**

36 **(II) THE VALUE OF ADDITIONAL SERVICES PROVIDED TO THE**

1 **TRANSITIONING STUDENT BY THE DIVISION OF REHABILITATION SERVICES UNDER**
2 **§ 21-305 OF THIS ARTICLE AFTER A PROLONGED SCHOOL CLOSURE.**

3 21-305.

4 (a) (1) In this section the following words have the meanings indicated.

5 (2) "Division" means the Division of Rehabilitation Services within the
6 Maryland State Department of Education.

7 (3) **"PROLONGED SCHOOL CLOSURE" HAS THE MEANING STATED IN §**
8 **8-404.1 OF THIS ARTICLE.**

9 (4) "Transition services" means a coordinated set of activities for a student
10 with a disability who meets the definition of a transitioning student that promotes
11 movement from school to postschool activities, including postsecondary education,
12 vocational training, integrated employment, supported employment, adult services,
13 independent living, and community participation.

14 [(4)] (5) "Transitioning student" means a student with a disability who is
15 between the ages of 14 and 21 years who meets the eligibility criteria of the federal
16 Individuals with Disabilities Education Act or § 7 of the federal Rehabilitation Act.

17 (b) The Division shall:

18 (1) Assign a rehabilitation counselor as a liaison to each Maryland public
19 high school;

20 (2) Establish a cooperative agreement with each county board defining
21 roles, responsibilities, and procedures in order to provide appropriate transition services
22 for a transitioning student; and

23 (3) Develop, in consultation with county boards, for each transitioning
24 student who is determined eligible for rehabilitation services, an individualized plan for
25 employment prior to graduation.

26 (c) **THE DIVISION SHALL ENSURE THAT A TRANSITIONING STUDENT WHOSE**
27 **SCHOOL IS SUBJECT TO A PROLONGED SCHOOL CLOSURE AND IS RECEIVING**
28 **EXTENDED LEARNING IN ACCORDANCE WITH § 8-404.1 OF THIS ARTICLE HAS**
29 **ACCESS TO THE SERVICES PROVIDED UNDER SUBSECTION (B) OF THIS SECTION FOR**
30 **1 YEAR FROM THE DATE ON WHICH THE PROLONGED SCHOOL CLOSURE ENDS.**

31 (D) (1) Each county board shall transmit to the Department information
32 relating to the postsecondary anticipated services of the county's transitioning students.
33 The information shall be reported in the manner required by the Department.

1 (2) The Department shall aggregate the information provided under
2 paragraph (1) of this subsection and forward the information annually to:

3 (i) The Behavioral Health Administration of the Maryland
4 Department of Health;

5 (ii) The Developmental Disabilities Administration of the Maryland
6 Department of Health; and

7 (iii) Other appropriate State adult services agencies, as determined
8 by the Department.

9 (3) The information under this section shall include, for each transitioning
10 student:

11 (i) The student's current age;

12 (ii) The projected year of exit of the student from school;

13 (iii) Anticipated needs of the student;

14 (iv) The student's county of residence; and

15 (v) Any other information that the Department considers
16 appropriate.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
18 measure, is necessary for the immediate preservation of the public health or safety, has
19 been passed by a ye and nay vote supported by three-fifths of all the members elected to
20 each of the two Houses of the General Assembly, and shall take effect from the date it is
21 enacted.