

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 998
Ways and Means

(Delegate Griffith)

County Boards of Education - In-Person Instruction and Related Services -
Requirement

This bill requires local boards of education, for the 2021-2022 school year, to open school buildings each school day to provide in-person instruction and specified related services to specified students. Each county board must provide instruction and related services unless the parent of the student requests that instruction and related services be provided through a full-time program of virtual or remote instruction, or a combination of virtual or remote instruction and in-person instruction. Special education and related services must be provided in accordance with a student's individualized education program (IEP) or 504 plan, and in consultation with the student's IEP team. Provision of in-person instruction and related services must adhere to health and safety standards and protocols established by the Maryland State Department of Education (MSDE) and the Maryland Department of Health (MDH) to limit the transmission of COVID-19. **The bill takes effect July 1, 2021, and terminates after June 30, 2022.**

Fiscal Summary

State Effect: None. The bill is directed toward local boards of education.

Local Effect: Local board of education expenditures may increase in FY 2022. The extent of additional costs cannot be reliably determined at this time and will depend upon prevailing conditions, including health standards, during the 2021-2022 school year. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Notwithstanding any law, regulation, or executive order to the contrary, for the 2021-2022 school year, each county board of education must require school buildings to be open each school day to provide in-person instruction and related services to:

- English language learners;
- homeless youth, as defined under the federal McKinney-Vento Homeless Assistance Act;
- students in foster care;
- students who are eligible for free or reduced-price meals;
- students who attend a Title I school;
- students with a parent or legal guardian who is active duty military;
- students with a parent or legal guardian working under a temporary worker visa issued by the U.S. Citizenship and Immigration Services; and
- students with disabilities.

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 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 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.

504 Plans

Section 504 of the federal Rehabilitation Act of 1973 requires schools to make a “reasonable accommodation” for students with disabilities to allow them to participate in school and school-related activities. Section 504 plans can be created to help students with disabilities receive accommodations that are not covered by their IEP. Students with disabilities who do not need an IEP may still receive accommodations through a Section 504 plan. For example, a student who has diabetes may have a Section 504 plan that includes a schedule for getting medication. A student who uses a wheelchair may have a Section 504 plan that provides for special transportation during field trips.

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.

For more information on COVID-19 and its impact on Maryland, including additional federal fund revenues, please see **Appendix – COVID-19**.

Local Expenditures: This analysis assumes that the bill supersedes the Governor's emergency order authority. Depending upon circumstances during the 2021-2022 school year, including the extent to which the COVID-19 pandemic continues to affect Maryland, local boards of education may incur additional expenditures to educate specified students in the classroom that might otherwise be avoided with the option to educate many of those students remotely. The impact on local board of education expenditures will also depend upon the extent to which parents opt for virtual instruction under the bill.

Additional costs for local boards of education likely will relate to those expenditures linked to adhering to health and safety standards and protocols established by the MSDE and the MDH to limit the transmission of COVID-19. These costs may relate to the provision of personal protective equipment and other safeguards for students, teachers, and other school staff and may also relate to the transportation of students in a manner that limits transmission. Further, any requirement to enhance physical distancing beyond levels experienced prior to the COVID-19 pandemic may require smaller than usual student to

teacher ratios, thus potentially increasing both staffing costs and costs related to providing adequate classroom space.

Local school systems (and county governments) have received significant federal funding to date to assist with the COVID-19 pandemic, which may be used to pay for additional expenses associated with opening schools to in-person instruction for the student populations as specified in the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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Appendix – COVID-19

In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

Testing, Cases, and Deaths in Maryland

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

Vaccines

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2021, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: coronavirus.maryland.gov/#Vaccine.

Declaration of a State of Emergency and Initial Executive Orders

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

Emergency Legislation

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

Subsequent Executive Orders and Advisories

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

Federal Legislation Regarding COVID-19

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

Federal Funding for Maryland to Address COVID-19

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).