

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 829 (Senator Hester)
 Education, Energy, and the Environment

Primary and Secondary Education - Virtual Education - Requirements

This bill establishes requirements related to virtual education for public schools, including requirements for (1) virtual schools; (2) teacher preparation programs; (3) addressing and mitigating the effects of learning loss; and (4) expanding computer and Internet security infrastructure for virtual education. The bill also authorizes virtual education days for severe weather conditions and other circumstances as specified. No virtual schools for the elementary band may be approved for operation before December 1, 2025. A virtual school may include classes for prekindergarten or kindergarten students at the discretion of the State Superintendent of Schools. The bill also requires the Maryland State Department of Education (MSDE) to establish a universal learning management system (LMS) by September 1, 2022, that *may* be adopted by a local board. A virtual school established prior to the bill’s effective date may continue to operate through the 2024-2025 school year, as specified. The bill includes various reporting requirements for MSDE. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: MSDE expenditures increase by at least \$218,900 in FY 2024 and \$645,300 in FY 2025 to hire staff and increase computer security. Future years reflect the elimination of one-time computer security costs. Additionally, expenditures may increase by up to an estimated \$3.7 million annually for user fees for a statewide LMS (not shown); however, these costs cannot be reliably estimated as participation by local school systems is optional. Federal COVID-19 funds may be available to cover these costs into FY 2025, as discussed below; otherwise general funds are used.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	218,900	645,300	151,700	158,400	166,600
Net Effect	(\$218,900)	(\$645,300)	(\$151,700)	(\$158,400)	(\$166,600)

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

Local Effect: Local school systems can likely handle the bill's requirements with existing resources, as explained below.

Small Business Effect: None.

Analysis

Bill Summary:

Virtual Education Days for a Severe Weather Events and Other Circumstances

A local board of education may authorize the local superintendent of schools, in cases of severe weather conditions, a natural or civil disaster, or another incident that necessitates school closure, to provide virtual education days to students instead of closing the public school in the county. In addition, a local board may authorize the local superintendent to provide virtual education days using only asynchronous learning to students on days in which school staff are engaged in professional learning or a school is closed for graduation.

The local board must discuss and vote on this topic at an open meeting before authorizing the use of virtual education days. The county board's plan for the use of virtual education days must be published on the school system's website. The plan must include, as specified, (1) a plan for attendance; (2) opportunities for making up missed work; (3) device and Wi-Fi access for all staff and students; (4) specific strategies for continued individualized education program implementation; and (5) assurance that coursework during a virtual school day will not negatively impact a student's grade. A local superintendent may provide a virtual education day only if authorized by the county board, if conditions are likely to prevent normal attendance, and if the local school system has not used all its allowed virtual education days.

The local school system may use no more than 10 virtual education days per year, with no more than 5 using only asynchronous instruction. A virtual education day that uses both synchronous and asynchronous instruction must limit the use of asynchronous instruction to 2.5 hours of the school day.

If a virtual education day is implemented, the local superintendent must notify school principals as soon as possible and they must immediately notify students, parents, and staff. The virtual education day must consist of at least 4 hours of synchronous and asynchronous instruction, and the superintendent must adequately design the virtual education day model before implementation.

Universal Learning Management System

By September 1, 2023, MSDE must (1) establish a statewide universal LMS for eventual use in all public schools in the State and (2) hire a dedicated employee to implement and manage the universal LMS.

If a county board has not, by August 31, 2023, contracted to license an LMS other than the universal LMS established by MSDE, the local board *may* adopt the universal LMS established by MSDE. MSDE must provide technical support, aid with professional development, and financial support to a county board that adopts the universal LMS established by MSDE; however, MSDE may not provide technical support to a county board that does not adopt the universal LMS.

Beginning with the 2025-2026 school year, MSDE must make the State curriculum standards developed as part of the Blueprint for Maryland's Future (Chapter 36 of 2021) available through the universal LMS.

Virtual Schools

The bill significantly alters the definition of, and approval process for, virtual schools.

Defined: A “virtual school” is defined as a public school established by a local board or multiple local boards that uses one or more technologies to deliver instruction to its students entirely or primarily online and in which students and instructors participate remotely from separate locations. Only a local board of education or multiple local boards of education under a written agreement may establish a virtual school. MSDE’s authority to establish a virtual school is repealed.

The bill’s requirements for virtual schools do not apply to (1) a virtual learning opportunity offered by MSDE or a local board of education under the Maryland Virtual Learning Opportunities (MVLO) program; (2) an upper-level high school program that has online components and designs a student’s schedule to accommodate the student’s work schedule; or (3) a public school operating under a virtual education plan during a prolonged state of emergency.

Authorization: Subject to the approval of MSDE, a local board may establish one virtual school for the elementary, middle, and high school grade bands. Each virtual school must receive final approval from the State Board of Education (SBE).

MSDE may revoke approval of a virtual school, subject to final approval of SBE, if during the previous school year the virtual school fails to meet the standards established by MSDE in regulation.

Each approved virtual school must have a school code assigned by MSDE.

Student Enrollment: In addition to the criteria established by MSDE or a local board, an application for enrollment in a virtual school must require an applicant to describe why instruction in a virtual learning environment will lead to successful academic outcomes for the applicant. Not more than 10% of the students from a single public school in the county in any school year may enroll in a virtual school established by a local board of education; however, MSDE may authorize a local board to exceed the cap on a showing of just cause.

If a local board of education receives more applications than there are available spaces in a virtual school, the local board must admit all students on a lottery basis. A local board must give greater weight to a student's lottery status based on demographic diversity and any other criteria established by the local board. To the extent practicable, the student body of a virtual school must reflect the socioeconomic, racial, ethnic, cultural, and gender diversity of the students enrolled in the county's public school system.

The local board must develop an outreach campaign to provide information to the public on the availability of the virtual school option and encourage applications reflecting the socioeconomic, racial, ethnic, cultural, and gender diversity of the public school system in the county.

Services and Curriculum: A virtual school must provide each enrolled student with access to the following services: (1) to the extent practicable, extracurricular activities including sports at the public school the student would otherwise attend; (2) notwithstanding any other law or regulation and subject to a participation agreement between the public school and the parent or guardian of the student, participation in organized athletics and on athletic teams at the public school the student would otherwise be required to attend; (3) wraparound services; (4) food and nutrition services; and (5) health care services equivalent to services available to students who receive in-person instruction in the county's public schools. A virtual school must provide informational material on specified school policies. A virtual school curriculum must have an interactive social and emotional wellness component designed for a virtual school environment.

If required, a virtual school must provide the appropriate digital device to a student to participate in the virtual school.

A virtual school is strongly encouraged to hold in-person orientation sessions. If the virtual school is unable to hold in-person orientation sessions, it must hold online orientation to provide specified information.

After collaboration with local school systems, MSDE must establish in regulations specified standards for a virtual school. MSDE and a local board must adopt policies for

the mandatory return to in-person instruction for students enrolled in a virtual school, including students who are failing academically after receiving the appropriate supports.

Teachers and Staff: In addition to a current requirement to have a teaching certificate or any other relevant professional certification authorized under the Code of Maryland Regulations (COMAR 13A.12.01), a teacher or education support personnel assigned to a virtual school must (1) be an employee of the county, or collaborating county, that established the virtual school; (2) be subject to the collective bargaining agreement of that jurisdiction; and (3) have access to professional development.

A collective bargaining agreement may include provisions specific to employees who work in a virtual school in consideration of the conditions and requirements relevant to that work environment. An employee assigned to a virtual school may not be required to provide virtual and in-person instruction or support to students simultaneously.

Subject to standards set by MSDE, the local board must determine the appropriate student-teacher ratio for the size of a class in a virtual school based on multiple factors. The student-teacher ratio of a class in a virtual school must be consistent with the countywide average class for in-person classes.

A virtual school must provide teachers and any other employees employed to teach or provide direct instruction in a virtual school the technology and equipment required and if necessary, a physical space to conduct teaching or provide direct instruction.

A virtual school must have a planned staffing model, including provisions for staff recruitment, training, evaluation, and professional development.

Oversight: The State Superintendent of Schools may assign the duties related to the oversight of virtual schools to the appropriate office or division within MSDE. These duties must include (1) the development, compilation, and updating of best practices for teaching and learning in a virtual environment, including the necessary amount of synchronous instruction, provision of services, and the operation and administration of a virtual school and (2) liaising with local boards that operate virtual schools or other stakeholders.

Prolonged State of Emergency

By June 1, 2024, a local board of education must, in consultation with local administrators and school staff, adopt a virtual education plan for use during a prolonged State of Emergency using the local board's continuity of learning plan in effect during the 2020-2021 school year.

The virtual education plan for a prolonged State of Emergency adopted by a local board of education must contain specified components, and be updated by the board every two years. When a school is operating under a virtual education plan due to a prolonged state of emergency, the principal must require a staff member to conduct regular wellness check-ins with students at least once a week, with specified follow-up as needed.

Virtual Education Teacher Preparation

Each teacher preparation program must include training in the skills and techniques for teaching effectively in a virtual learning environment, including the use of online curriculum.

Computer and Internet Security

MSDE must expand computer and Internet security infrastructure for virtual education, including staff to maintain security. Each local school system must dedicate at least one staff member to oversee computer and Internet security infrastructure for virtual education.

Advisory Committee

The State Superintendent of Schools must establish an advisory committee of sponsors of virtual schools and programs in Maryland to document existing resources, review models of virtual schools and programs, and explore alternative model and recommend improvements for Maryland virtual schools and programs.

Revoking of Approval of Current Virtual Schools

MSDE *must* revoke approval of a virtual school authorized to continue to operate through the 2024-2025 school year if during the previous two school years the virtual school performed in the bottom 10% of schools. A virtual school that is authorized to continue to operate is encouraged to seek all available opportunities to bring the virtual school into compliance with the requirements established by the bill.

Regulations

SBE must adopt regulations to carry out the provisions of the bill, including establishing minimum criteria for the adoption and implementation of virtual education plans by a local board during a prolonged state of emergency.

Reporting Requirements

By December 31, 2023, the State Superintendent of Schools must submit a report to SBE and the General Assembly on findings and recommendations regarding the appropriate balance of the number of hours of synchronous learning and asynchronous learning for instructional effectiveness of students in virtual schools based on research that has systematically examined this issue and collaboration with local school systems.

By July 1, 2025, MSDE, in consultation with current public school teachers, current public school administrators, academic experts, and State and national experts in online education must (1) study best practices for virtual education, including those specified and (2) develop criteria for the establishment of virtual schools that incorporate the data gathered and are as least as rigorous as the criteria established by the bill. By September 1, 2025, MSDE must report to the Governor and the General Assembly on the results of the study and criteria developed.

Community School

In addition to existing responsibilities, a community school must address the effects of learning loss caused by the effects of the COVID-19 pandemic and chronic absenteeism caused by school closure and lack of in-person instruction.

Current Law:

Blueprint for Maryland's Future

House Bill 1300 of 2020 implemented the Blueprint for Maryland's Future, which was first established by Chapter 771 of 2019, substantially altering State aid and State policy for public schools. The bill, which incorporated policies and accountability recommendations of the Commission on Innovation and Excellence in Education, passed the General Assembly in March 2020 and was vetoed by the Governor for policy reasons. The veto was overridden in 2021, thus becoming Chapter 36. For a full description of the Blueprint for Maryland's Future, including a description of the Foundation Program, Guaranteed Tax Base Program, and Concentration of Poverty grants, see the [Fiscal Note for HB 1300 of 2020](#), Chapter 36. Chapter 55 of 2021 revised the provisions and timeline for the implementation of the Blueprint for Maryland's Future in light of the delayed effective date of Chapter 36; the [Fiscal Note for Chapter 55](#) (HB 1372 of 2021) describes these changes.

Teacher Preparation Programs

In addition, Chapter 36 establishes requirements for teacher preparation programs at institutions of higher education and alternative teacher preparation programs, including course content, teacher training practicums, and mentor teacher selection criteria.

In addition, Chapter 36 establishes requirements for teacher preparation programs. Specially, a teacher preparation program must (1) include specified components of instruction; (2) require program participants to demonstrate competency in each of the required components; (3) provide training in the knowledge and skills required to understand and teach the Maryland curriculum framework; and (4) on or after July 1, 2025, require passing a nationally recognized portfolio-based assessment of teaching ability as a requirement for graduation.

Further, each teacher preparation program must incorporate classroom observations in which the program participant is observed in different school settings at the beginning of the teacher preparation program to assist a program participant in determining if the program participant has the aptitude and temperament for teaching.

To further support and strengthen the profession of teaching in the State, MSDE must (1) provide technical assistance and other supports to teacher preparation programs at institutions of higher education; (2) develop a systematic method of providing feedback to teacher preparation programs to ensure that institutions of higher education have the most current information about the content, composition, and expectations for teachers of preK-12; and (3) assist teacher preparation programs in seeking and retaining highly qualified individuals, including individuals from groups that are historically underrepresented in the teaching profession.

SBE and the Professional Standards and Teacher Education Board must, in consultation with the Accountability and Implementation Board, adopt regulations to implement these provisions.

Model Curriculum

According to Chapter 36, MSDE, in consultation with experienced teachers, must develop specified curriculum standards and curriculum resources that include specified elements and meet specified standards, for each subject at each grade level, that build on one another in logical sequence in core subjects. MSDE must submit the curriculum resources and curriculum standards developed to SBE for adoption.

Using specified assessments in specified core subjects, SBE must identify low-performing schools. If MSDE, based on a recommendation by the Expert Review Team, determines

that a low-performing school's performance is largely due to curricular problems, then the school must use the model curriculum. Otherwise, local school systems and public schools are not required to adopt the curriculum standards and resources developed by MSDE.

Maryland Virtual Learning Opportunities Program

MSDE must provide MVLO that include (1) offering a distance learning program to provide Maryland public school students with equal opportunities to develop a strong academic foundation; (2) offering expanded educational choices not otherwise available to students through online courses and services; and (3) expanding the professional development opportunities available to educational staff in Maryland public schools through online courses and services.

MSDE must develop, or review and approve, online courses and services. MSDE must also (1) develop standards for teachers and other school system employees for the offering of courses or services on the Internet or through other developing technologies and (2) review courses and courseware to assure quality and alignment with the Maryland content standards and other appropriate standards. Further, the development, review, and approval of an online course or service as part of the MVLO program must include an assessment regarding the accessibility of the online course or service to individuals with disabilities, including the blind.

A local board of education may request that MSDE develop, or review and approve, online courses and services. MSDE may delegate this responsibility to a local board of education. If MSDE delegates this authority to a local board, the local board must request approval of the online course from MSDE once it has completed the development or the review and approval. A local board may impose reasonable fees to be paid by the vendor to cover the cost of reviewing and approving online courses and services and must remit 15% of the fees collected to MSDE. SBE may set reasonable fees for developing or reviewing online courses and services and for processing approvals for online courses and services.

Establishment of a Public School

Subject to approval by the State Superintendent and in accordance with SBE regulations, a local board may establish a public school if, in its judgment, it is advisable. On approval by the State Superintendent, any school established becomes a part of the State program of public education. With the advice of the local superintendent of schools, a local board of education must determine the geographical attendance area for each school established.

Virtual Schools

“Virtual school” is defined as a public school established by MSDE or by a local board in which the school uses technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting.

Subject to the approval of MSDE, a local board may establish a virtual school. A virtual school is subject to all applicable federal and State laws and regulations governing the operation of a public school. A student who is eligible for enrollment in a public school in the State may enroll in a virtual school.

Enrolled students must be provided with a sequential curriculum that meets or exceeds the local standards and is approved by SBE, as well as regular assessments. Enrolled students must also be provided with the same length of time for learning opportunities per academic year that is required for public school students unless the virtual school can show that a student has demonstrated mastery or completion of the subject area. A virtual school’s curriculum must have an interactive program with *significant* online components.

A virtual school must provide the parents or guardians of enrolled students with instructional materials, including software, and information on the closest public facility that offers access to a computer, printer, and Internet connection. A virtual school may not provide funds for the purchase of instructional programs or materials to a student or to a student’s parent or guardian.

A teacher employed by a virtual school must have a teacher’s certificate issued by the State Superintendent. A virtual school must maintain an administrative office in the State that must be considered its principal place of business.

A virtual school must be evaluated each year by its sponsor based on the following criteria: (1) the extent to which the school demonstrates increases in student achievement according to local and State academic standards; and (2) the accountability and viability of the virtual school, as demonstrated by its academic, fiscal, and operational performance.

SBE must adopt regulations related to virtual schools, including establishing minimum criteria for the establishment and approval of a virtual school.

Community School

As defined by Chapter 529 of 2019, a “community school” is a public school that establishes a set of strategic partnerships between the school and other community resources that promote student achievement, positive learning conditions, and the well-being of students, families, and the community.

State Expenditures: As shown in **Exhibit 1**, *under one set of assumptions*, State expenditures increase for MSDE by at least \$218,854 in fiscal 2024 and \$645,263 in fiscal 2025 to hire staff and increase computer security. Fiscal 2024 expenditures reflect hiring one full-time staff dedicated to the implementation and management of the statewide LMS as required by the bill and a computer security contractor. This estimate accounts for a 120-day start-up delay following the bill’s June 1, 2023 effective date. It includes salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Additional costs associated with the LMS are discussed below.

The information and assumptions used in this estimate are explained in further detail below.

Exhibit 1
Estimated State Expenditures
Fiscal 2024 and 2025

	<u>FY 2024</u>	<u>FY 2025</u>
Regular Position ¹	1	
Salary and Fringe Benefits ¹	\$111,445	\$144,192
Computer Security ²	100,000	500,000
Other Operating Expenses	7,409	1,071
Total State Expenditures	\$218,854	\$645,263

¹ One full-time learning management system (LMS) administrator beginning in fiscal 2024.

² Reflects \$100,000 computer security consulting fee in fiscal 2024 and \$500,000 in upgrades in fiscal 2025.

Note: This estimate does not reflect costs for the statewide LMS as these costs cannot be reliably estimated at this time. If all local school systems choose to use the statewide LMS, general fund expenditures increase by an estimated \$3.7 million per year due to user fees for all K-12 students and professional staff. If fewer local school systems choose to use the statewide LMS, costs are less. Additional expenditures related to computer security and the LMS are possible. Costs could include additional staff.

Source: Department of Legislative Services

Universal Learning Management System and Computer Security

By September 1, 2023, MSDE *must* (1) establish a statewide universal LMS for eventual use in all public schools in the State and (2) hire a dedicated employee to implement and manage the universal LMS. If a local board of education has not, on or before

August 31, 2023, contracted to license an LMS other than the LMS established by MSDE, the local board *may* adopt the universal LMS established by MSDE.

It is unknown how many local school systems will choose to participate in the universal LMS. However, to the extent local school systems choose to participate, expenditures may increase significantly, up to an estimated \$3.7 million annually. This estimate is based on annual user fees of \$3.59 per student and \$6.74 per staff and 853,704 public school students (excluding preK students) and 96,885 professional staff (as of October 2021).

In response to a similar bill during the 2022 session, MSDE advised that it will need to collaborate with the Department of Information Technology (DoIT) on additional support required for the statewide LMS and to improve its computer and Internet security. It is unknown if the current technology infrastructure could support additional simultaneous users. MSDE estimates a \$100,000 contract in fiscal 2025 for a project manager to research current capacity and develop a plan for expanding the current infrastructure. The Department of Legislative Services estimates costs of approximately \$500,000 in fiscal 2025 with no ongoing costs to implement the plan's recommendations. An in-depth needs assessment by DoIT is necessary for a more accurate cost estimate. Thus, there may be additional expenditures related to establishing a statewide LMS and improving computer and Internet security that cannot be reliably estimated at this time; however, any such costs could be significant. Costs could include hiring additional information technology staff beyond the dedicated LMS employee required by the bill.

The bill also requires that the State Model Curriculum be available in the LMS by the 2025-2026 school year (fiscal 2026). According to the fiscal and policy note for Chapter 36, the model curriculum is anticipated to be completed in fiscal 2024, so there are no additional costs associated with that requirement.

Teacher Preparation Programs and Reporting Requirements

Public four-year institutions can meet the teacher preparation requirements using existing resources. MSDE can produce the required virtual education reports using existing resources.

Federal COVID-19 Funds

MSDE and local school systems received federal funding from three federal laws that were passed to address the impact of COVID-19 on K-12 public education, including the American Rescue Plan (ARP) Act of 2021. In total, MSDE receives nearly \$303 million, including \$195 million due to ARP. Local school systems directly receive approximately \$3.0 billion in additional federal funds. All of the funds must be encumbered by September 30, 2023, (fiscal 2024) but may be spent potentially into fiscal 2025. To the

extent that federal funds have not been spent fully, they may be used instead of general funds for some or all of the expenditures related to the bill through fiscal 2025.

Local Fiscal Effect: A local school system that elects to establish a virtual school must meet specified requirements. A local board of education may authorize a local superintendent to provide virtual education days during a severe weather event during specified circumstances.

Overall, local school systems can likely meet the requirements of the bill using existing resources, although local school systems may make different choices about virtual education, including during a prolonged State of Emergency under the bill than under current law.

Statewide Universal Learning Management System

There may be costs associated with training staff on the new LMS. Any such costs are assumed to be minimal and absorbable. To the extent that the statewide LMS replaces the need for local LMSs, local school system expenditures decrease. However, any such decrease cannot be reliably estimated.

Virtual Schools and Virtual Education Days

It is assumed that a local school system that chooses to establish a virtual school will choose to do so by reallocating existing resources. Therefore, revenues and expenditures are not materially affected. Further, the establishment of a virtual school is at the discretion of each local school system.

All local school systems developed Continuity of Learning plans for use during the 2020-2021 school year; thus, local school systems already have a plan that includes the components required for the virtual education plan for use during a prolonged State of Emergency.

Community Schools

It is assumed that community schools will address and mitigate the effect of learning loss and chronic absenteeism caused by school closure and lack of in-person instruction using existing and future resources directed to community schools by Chapter 36.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 362 and HB 1163 of 2022 and HB 1376 of 2021.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2023
rh/mcr

Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510