

Karen B. Salmon, Ph.D. State Superintendent of Schools

BILL: House Bill 724 DATE: February 12, 2021

SUBJECT: Special Education — **Education** — **COMMITTEE:** Ways and Means

and Vocational Services -Prolonged School Closure

POSITION: Information Only

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EXPLANATION:

The Maryland State Department of Education (MSDE) is providing information for consideration regarding HB 724 – Special Education – Prolonged School Closure – Extension of Education Services, which requires the county boards of education to offer and provide students with disabilities, age 17 through 22, with an option to continue attending school after the student's anticipated graduation or exit date in the event of a prolonged school closure. The MSDE writes to ensure that the Education, Health, and Environmental Affairs Committee understands the current remedial process in place to address the failure to meet a student's special education needs, also known as compensatory education/recovery services.

The unprecedented closure of school buildings due to the COVID-19 pandemic has raised new and unique concerns about the provision of educational services, and the shift to remote learning presents additional challenges in educating students with disabilities who are serviced under the Individuals with Disabilities Education Act (IDEA). The IDEA and its accompanying regulations require local school systems (LSSs) to provide eligible students with a free appropriate public education, also known as "FAPE." (34 C.F.R. § 300.101).

The United States Department of Education and MSDE recognize that during this period of extended school closure and heightened health and safety needs, an LSS may not have been able to provide some specially designed instruction, related services, and supplementary aids and supports to students who required them as a part of FAPE. While this may have occurred through no fault of the LSS, the obligation to provide a student with FAPE remains, and the student may be entitled to remedial services. Compensatory education/recovery services are an equitable remedy created by courts to address a failure to provide FAPE under the IDEA, or in other words, to remediate the negative impact experienced by the student due to the violation.

In Technical Assistance Bulletin #20-09: *Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools*, the MSDE informed LSSs:

¹ For TAB #20-09 and other special education technical assistance bulletins issued by the MSDE, please visit the MSDE website at http://marylandpublicschools.org/programs/Pages/Special-Education/TAB.aspx.

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During these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing education services to these students. Therefore, [LSSs] were instructed to provide a FAPE to the maximum extent possible during the period of virtual and/or distance learning (and should continue to do so as schools re-open) to mitigate the need for compensatory education/recovery services. This is NOT a waiver of the FAPE requirement under IDEA.

While a student is not guaranteed a specific educational outcome, the law requires that the student receive an appropriate educational program. Therefore, [LSSs] will need to determine whether the educational services provided to the student during the period of school closure and re-opening, pursuant to the [Individualized Education Program (IEP)] were reasonable to allow the student to be involved in and make progress in the general education curriculum and on their IEP goals.

In addition to this guidance, the MSDE is currently working with LSSs to ensure they have a system in place to address compensatory education/recovery services for each eligible student, including students who may have exited the special education system during the 2019-2020 and 2020-2021 school years.

The aforementioned process ensures that students who did not receive FAPE are provided with remedial services that are tailored to the specific areas in which they experienced regression and/or a lack of expected progress.

It is also important to note that graduation is change of placement, and therefore the IEP team must meet to determine whether graduation remains appropriate or whether the student should remain in school. Hence, there is a process in place to address students working towards their high school diploma who have not received a FAPE.

HB 724 as written will expand the LSS's obligation to the student with a disability by providing the student with an additional year of school, regardless of whether that student experienced any regression and/or lack of progress.

Additionally, for the Division of Rehabilitation Services (DORS) which administers the Vocational Rehabilitation (VR) and the Pre-Employment Transition Services (Pre-ETS) federal programs, HB 724 will impact its ability to deliver the services specified in this legislation. DORS is primarily a federally funded program that has a required State Match and Maintenance of Effort. Both federal and State funds can only be expended on clients who meet the eligibility criteria for these two programs. For those individuals who do not meet the federal eligibility requirements, the State will be required to fund the delivery of all services.

In reference to the requirements for the Developmental Disabilities Administration (DDA) in HB 724, it should be clear that the MSDE does not have control over DDA programs (i.e. Transitioning Youth Initiative under § 7–721); therefore, the MSDE cannot ensure students receive these services.

We respectfully request that you consider this information as you deliberate **HB 724**. For further information, please contact Zachary Hands at 410-767-0504 or <u>Zachary.hands1@maryland.gov</u>.