# Legislative Committee Meeting

**Monday, August 31, 2020**  
10:00 a.m. – Noon  
*Teleconference Meeting*

Julie Hummer, Chair  
Mavis Ellis, Vice Chair

## Agenda

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<td>Information</td>
<td>Julie Hummer/All</td>
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| 3 | Recovery & Reopening Plan Issues  
  - PSSAM Letter Requesting Health Metrics (8/19)  
  - State Board Discussion of Local Plan Review & Evaluation (8/24)  
  - Governor/Supt. Press Conference & Release of Health Guidance (8/27)  
  - MABE/PSSAM Response (8/28)  
  - Special Meeting of the State Board (9/1)  
    - Mandated hours/days of synchronous instruction  
    - MABE & PSSAM Letters (8/31) | Information & Discussion | Julie Hummer/John Woolums/All |
| 4 | State Board & MSDE Updates  
  - Teacher Licensure & Preparation Regulations  
  - Early Grade Student Discipline Reports | Information & Discussion | Julie Hummer/John Woolums/All |
| 5 | State Funding & Policy Updates  
  - Board of Public Works Sept. 2 Meeting  
  - Sept. 30 Enrollment Count & Funding | Information & Discussion | Julie Hummer/John Woolums/All |
| 6 | Federal Funding & Policy Updates  
| 7 | Additional Issues for Discussion | Discussion | All |
| 8 | Legislative Committee Calendar  
  - September 28, 2020, 10-Noon  
  - 2020-2021 Meeting Calendar | Information | Julie Hummer/All |
| 9 | Adjournment | Closing Remarks | Julie Hummer |
Meeting Materials for August 31, 2020

Recovery & Reopening Plan Issues

- PSSAM Letter to the Maryland Dept. of Health Requesting Health Metrics (8/19/20)
- MSDE Report on Review of Local Education Recovery and Reopening Plans (8/24/20)
- Governor's Press Conf. Announcing Reopening Authorization & Standards (8/27/20)
  (Note: the link to the press conference includes links to video of the announcements and a link to the health standards issued by the MD. Dept. of Health)
- MDH School Health Guidelines & CDC FAQs About Reopening Schools
- MABE/PSSAM Joint Statement in Response to the Press Conference (8/28/20)
- State Board Special Meeting Agenda, Report & Recommended Actions (9/1)

State Board/MSDE Updates

- MABE Monitor for August 24th & 25th State Board Meetings

Equitable Services Funding

- MABE Letter to Dr. Salmon & MABE Letter to U.S. Senators Opposing the Federal Rule (5/14/20)

Legislative Committee Meeting Calendar

- September 28, 2020
  - MABE Annual Conference Oct. 14-15
- October 26, 2020
- November 16, 2020
- December 14, 2020
- January 4, 2021
  - Session Convenes Jan. 13, 2021
- February 1, 2021
- February 22, 2021
- March 15, 2021
- April 5, 2021
  - Session Adjourns April 12, 2021
- April 26, 2021
TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: August 24, 2020
SUBJECT: Maryland Together: Maryland’s Recovery Plan for Education Update
Local School System Recovery Plans Implementation and Evaluation

PURPOSE:

To review an update on the Maryland Together: Maryland’s Recovery Plan for Education and to share plans for the Local School System Recovery Plans Implementation and Evaluation.

BACKGROUND/HISTORICAL PERSPECTIVE:

Given the COVID-19 pandemic, the closure of schools from March 16, 2020, through the remainder of the 2019-2020 school year, the Maryland State Department of Education (MSDE), the State Board, and the Local School Systems have been planning for the opening of schools for the 2020-2021 school year.

EXECUTIVE SUMMARY:

Information on the first day of school for each local school system, instructional plans/models for the opening of schools, student engagement in the learning process, social emotional learning, grading, attendance, and connectivity will be shared. The process for the Local School System Recovery Plans Implementation and Evaluation will also be shared.

ACTION:

Information for discussion

ATTACHMENTS:

Maryland Together: Maryland’s Recovery Plan for Education Update PowerPoint
Local School System Recovery Plans Implementation and Evaluation PowerPoint
Local School System Recovery Plans Implementation and Evaluation Draft Plan
Opening Models Attachments A and B
Student Engagement Attachment C
Maryland Together: Maryland’s Recovery Plan for Education

State Board Update
August 24, 2020
First Day of School for Local School Systems

School systems are opening schools (first day) between August 31 and September 8:

August 31
(8 school systems – Charles, Frederick, Montgomery, Prince Georges, Queen Anne’s, St. Mary’s, Washington)

September 1
(2 school systems – Calvert, Cecil)

September 8
(14 school systems – Allegany, Anne Arundel, Baltimore City, Baltimore County, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Somerset, Talbot, Wicomico, Worcester)
Opening Models

- Ten school systems have announced that they are beginning virtually and will continue virtually through the end of first semester (end of January). (Anne Arundel, Baltimore County, Calvert, Frederick, Harford, Howard, Montgomery, Prince George’s, Queen Anne’s, Wicomico).

- Fourteen local school systems have announced that they are opening virtually but will be transitioning to start bringing groups of students into the buildings for instruction – the timing for bringing groups of students into the building differs by school system.
Opening Models (continued)

- Allegany - will start virtually with no timeline as to how long it will be virtual.
- Anne Arundel – virtual through first semester; will look to bring students back if conditions permit.
- Baltimore City – will start virtually with a goal of moving to hybrid option later in the fall semester, if feasible. The decision will be made by October 16 at the latest; end of September small groups in selected schools.
- Baltimore – virtual through first semester; no plans to bring in small groups earlier than first virtual phase of reopening.
- Calvert – virtual through first semester; intends to bring in targeted groups for in person instruction starting as early as September 21.
- Caroline – will start virtual and will transition; small groups starting September 8.
- Carroll – will be fully virtual with the goal of moving to hybrid later in the fall semester (if feasible); will provide small group in person instruction for a short period prior to start of the school year to special education students and CTE. Decision will be made by October 14 Local Board meeting.
- Cecil – will be fully virtual for first week, before moving to provide face-to-face instruction for small groups of students (starting September 8) in each school based on the needs of students. Will evaluate the success of the model after 30 days to determine if the model can be expanded.
- Charles, Dorchester – will initially be fully virtual with no firm plan or timeline to bring in small groups of students during the first phase of reopening.
- Frederick – virtual through first semester; Begin with small groups on September 14.
Opening Models (continued)

- Garrett – will be fully virtual for at least the first nine weeks of the semester with the goal of transitioning to a hybrid model (will reassess situation during course of first semester); Selected students in each school starting September 14
- Harford - Second semester, though LSS will open a limited number of learning support centers in the fall where students, under the supervision of school district employees, will have access to the internet to engage in virtual learning, along with other services.
- Howard - Second semester, though LSS plans to phase in small group face-to-face instructional and well-being support starting in October
  - Kent – Will move to hybrid model starting Nov 11 for grades preK-8; starting Jan 29 for grades 9-12
  - Montgomery - Second semester; no commitment in plan to bring in small groups of students for in-person instruction earlier during the first fully virtual phase of reopening; LSS will make determination regarding transition to in-person instruction for second semester by the end of November
  - Prince George’s - Second semester; no commitment in plan to bring in small groups of students for in-person instruction earlier during the first fully virtual phase of reopening; LSS will make determination regarding transition to in-person instruction for second semester in December
  - Queen Anne’s – Second semester, though plan lays out a phased-in return for special education/IEP students to be completed by the winter 2021; superintendent’s back-to-school letter states LSS’s intention to bring back students for small group, face-to-face instruction based on prioritized needs within a few weeks of the start of the school year starting September 14.
Opening Models (continued)

- **Somerset** – Will begin staggered phase-in to a face-to-face instructional model 4 weeks after start of the fall semester (beginning Oct 5) that prioritizes the most vulnerable students, with the goal of bringing all students back for in-person instruction by Nov 2.

- **St. Mary’s** – Will begin staggered phase-in transition to hybrid model starting in the 2nd quarter of the fall semester.

- **Talbot** – The reopening announcement indicated that the LSS would be fully virtual for the first week of the fall semester (starting Sept 8), before bringing in small groups starting week of September 15.

- **Washington** - No firm date(s)/timeline set; once LSS determines that it is safe to return to schools, intends to transition students in small groups back to in-person instruction on a staggered/phased-in basis, focusing on the most vulnerable and those who are not thriving in a virtual environment, until all students are able to return.

- **Wicomico** - Second semester, though LSS intends to bring back small groups of students for in-person instruction, if conditions permit, beginning on or before October 1.

- **Worcester** – Superintendent's message, will begin face-to-face instruction for small groups of students requiring Tier 2 and 3 support starting 9/28 (the final plan says early/mid-Sept).

(Reference Attachments A and B)
Opening Models (summary)

• There are two Consortiums in the planning stage:
  
  o Nine-county Eastern Shore Consortium Blended Virtual Program (CBVP) which is under design. Parents can opt for this program, whereby students will use a shared (non-local school system) distance learning platform with classes taught by teachers within the school system or utilizing certified teachers from outside the local school system. School systems include Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester.
  
  o Three county Southern Maryland Consortium including Calvert, Charles, and St. Mary’s considering a blended virtual program for second semester. First semester, each of the school systems is using a blended virtual teaching and learning model using their own educators.
  
• Multiple school systems state the parents can opt out of the particular hybrid model and select to remain virtual for the entire school year.
Student Engagement

Synchronous learning – remote learning that happens in real-time with the interaction between the teacher and students that occurs in a face-to-face environment or in a virtual classroom setting, i.e., access from home via web conferencing.

Asynchronous learning – learning that occurs online without real-time interaction or instruction by an educator. Examples may include but not limited to pre-recorded video lessons, resource videos, assigned readings, and posted assignments.

(Reference Attachment C)
Social Emotional Learning (SEL)

Included in the local school system recovery plans are descriptions of how each school system will support the social emotional needs of their students and staff. Ninety-two percent of local school systems (22) have explicitly stated in their recovery plans that providing social emotional supports is a priority within their local school system. The remaining school systems address SEL in other documents.
A Multi-Tiered Lens (MTSS) of Social-Emotional Supports

Individualized Supports Wrap-Around

Check-Ins
Small Group Topic Circles
Conflict Resolution

Safe, Calm and Predictable Environments
Mindfulness
"Healing Happens in Relationships" (Trauma)
Modeling, Teaching and Reinforcing Social Emotional Competencies
Caring and Supportive Classrooms Practices
Community Circles (Restorative)
Cultural Responsiveness Pedagogy
How school systems are addressing the social-emotional needs of students

• Adjusting schedules to provide time for social emotional learning (morning meetings)

• Evidence based programs such as Second Step, Adverse Childhood Experiences (ACE’s), Youth Mental Health First Aid

• Evidence based practices such as mindfulness, restorative practices, trauma sensitive schools, and mental health connections with students and families.

• Professional learning for educators

• Out-reach to families

• Targeted interventions for students in need of more intensive supports.

• School counseling interventions and check-ins.
SEL – In Summary

All local school systems are implementing SEL in their schools (as referenced in Recovery Plans or additional documents)

• Five school systems specifically mention implementing restorative approaches, which includes Positive Behavioral Interventions and Support (PBIS), trauma-informed care, restorative conferences, peer mediation, conflict resolution, social emotional learning, and rehabilitation.

• Four systems mention the use of the Second Step program to promote social emotional development, safety, and well-being from early learning through Grade 8.

• Four systems mention implementing Handle With Care, a trauma-informed approach to SEL that raises awareness about trauma that students face away from school.

• All school systems are implementing SEL lessons in Grades K-8.

• Three systems mention implementing Social Emotional Foundations for Early Learning (SEFEL) for students from birth through 5 years of age.
Delivery of SEL

Local school systems are delivering SEL in a variety of ways:

• Lessons delivered by classroom teachers, school counselors, school social workers, and other student support services staff.

• 30 – 60 minutes of daily instruction at all grade levels.

• Emotional recovery/crisis teams to provide SEL resources to student and families as needed.

• Using on non-instructional day per week to provide SEL lessons. Professional learning opportunities will be offered to school staff to help them provide social and emotional supports virtually.

• Virtual check-Ins with students and families

• Virtual crisis counseling as needed.

• Opportunities for virtual circles.

• Time during virtual instruction to offer SEL lessons and opportunities to demonstrate social emotional competencies.
Grading

All local school systems will return to traditional/normal grading procedures with the start of the 2020-2021 school year.
Attendance

Daily attendance will be taken by all local school systems in virtual and/or hybrid environment.

Models for taking attendance include:

- Local School Systems are using a variety of platforms for capturing and/or recording attendance
- Examples of noting attendance include:
  - (for virtual days) participation in virtual platforms, submission of assignments, learning packet by the assigned due date, other evidence of engagement in learning.
    - Class attendance in the virtual platform can be taken in multiple ways. An assignment question, a Google Form, or the Google Meet attendance extension can be used to take virtual attendance. The latter two options also provide a Google Sheet that is time-stamped and can be easily filtered and organized.”
  - (for in-person class days in hybrid model) presence in class.

- School systems note that every effort will be made to find, support, and re-engage students who are not present.
  - There will be a campaign to promote daily attendance through communications and community outreach.
  - School support teams will be used

- School systems acknowledge within the same family will be scheduled to attend school for face-to-face instruction on the same days under the hybrid model.

- Will use the system platform to document student login history and use for attendance purposes; however, it is recognized that the platform should not be the only tool used to track attendance in order to ensure equity for all students, as many students will not be able to login consistently due to a variety of family constraints.
Connectivity

Broadband Access *

- Reported as of June 2020 (reliable access - numbers were an estimate)
  - Seven LSSs report: 80-100%
  - Eight LSSs report: 60-80%
  - Seven LSSs report: 40-60%
  - Two LSSs report: 20-40%

- Some LSSs reported trying to use hotspots this spring and summer and they were not functional in some geographic areas- finding alternate ways to meet student needs
  - Opening rooms in schools
  - Busses parked outside of schools
  - Workgroup addressing rural broadband

  - Broadband Initiative: $25,000,000 ($15,000,000 GEER; $10,000,000 of Coronavirus Relief Funds to local school systems)
Devices Across Maryland

Device Inventory - June 2020

- **Student devices needed:** 342,825
  - Replacements needed 101,200
  - Total 444,025

- **Staff devices needed:** 33,962
  - Replacements 3,150
  - Total 37,112

- **Funding provided:**
  - Elementary and Secondary School Emergency Relief Fund (ESSER Funds) $187,050,652
  - Governor’s Emergency Education Relief Fund (GEER Funds) $10,000,000
  - Coronavirus Relief Funds (CRF-Technology) $100,000,000

- Multiple LSSs report that devices are ordered but shipments will be delayed until October or November - finding alternate ways to meet student needs

- LSS are working diligently to comply with the Children’s Internet Protection Act (CIPA)  
  (Reference Attachment D)
Virtual Initiatives

LMS Usage
- Schoology - 11 LSS
  - Three LSSs will implement next year
- Blackboard - Three LSSs
- Its Learning - One LSS
- Canvas - Three LSSs
- Frog - One LSS
- Moodle - Two LSSs

Vendor Programs Being Explored
- APEX Learning
- Edmentum/ Calvert
- Florida Virtual
- Edgenuity
- Pearson (Connections Learning)
- Odysseyware
- Proximity

Sharing Innovative Strategies
- Backpacks K-5
- Addressing childcare, meals, access, and safety
- Using buses to solve WiFi issues - school and remote locations
- Configuring hot spots and devices - CIPA
- Teachers and Families at school
MSDE Professional Learning Opportunities and Participation

**Professional Learning for Remote Teaching** - unable to collect data as this is a public site

4 MSDE statewide sections of Online Teaching in Maryland (OTM)
   80 participants from LSSs throughout Maryland

11 LSS sections of OTM
   292 total participants

**Total Online Teaching in Maryland educators** - 372

**Educators participating in Summer Shadow Experiences** - 21

**International Society for Technology Education (ISTE) Summer Program** - 370 Maryland Educators

**Friday’s Institute Remote Teaching Course** - 638 Maryland Educators

(Reference Attachment E)
Local School Systems Recovery Plans
Implementation and Evaluation

State Board Update
August 24, 2020
LOCAL SCHOOL SYSTEMS RECOVERY PLANS IMPLEMENTATION AND EVALUATION

• *Maryland Together: Maryland’s Recovery Plan for Education* was released May 2020 followed by the release of an update June 2020

• Local School Systems were required to post their local Recovery Plans addressing 13 requirements identified in Maryland’s Recovery Plan

• Local Plans were posted on local websites by August 14, 2020

• A checklist of completion was required to accompany the Local Plan
Implementation and Evaluation

Each local school system will undergo a review of its plan to ensure it has planned for the safe return of students to their educational program whether in a remote, hybrid, or on-site environment.

- 13 requirements were established that ensure systems have examined all critical aspects of their return to the 2020-2021 school year and are accountable for the processes and outcomes they reflect in their recovery plans.
- The 13 requirements will be carefully reviewed in Part One.
- The Implementation of the requirements will be studied in greater depth in Part Two.
Requirements (13)

Local school system Recovery Plans will include:

1. Posting the plan online
2. Incorporating equity as a key component
3. Establishing local education recovery stakeholder groups
4. Identifying learning gaps and preparing a path for instructional success
5. Following and maintaining curricular frameworks and the MD College and Career Ready Standards
6. Adhering to components of IDEA, Section 504, and ADA
7. Developing protocols for individuals who test positive for COVID-19
8. Adopting and following health procedures outlined by the MSDE, the Maryland Department of Health, and the Center for Disease Control
9. Ensuring safe transportation for students
10. Developing a system for tracking attendance
11. Developing a plan for communication
12. Utilizing the COVID-19 checklist
13. Following the Maryland Public Secondary Schools Athletic Association guidance for interscholastic athletics and activities.
Timeline

August 2020 – Initiate reviews of Local School System Plans (Part One)
September 2020 – Share results of reviews with State Board
August/September 2020 – Train local school systems on studying the implementation and outcomes of Local Recovery Plans (Part Two)

October 2020 – Report on status of school openings
November 2020 – Provide first-marking period data to MSDE (local school systems)
December 2020/January 2021 – Present first marking period results to State Board

January 2021 – Present 2020-2021 fall enrollment data (including re-enrollment data and comparison of totals to other prior years) and 2020-2021 staffing data (including comparison to prior years) data to the State Board (posted on the Maryland Report Card)
February 2021 – Present 2019-2020 graduation data and 2019-2020 attendance data to State Board

Summer 2021 – Presentation of final Implementation and Evaluation reports to State Board
Part One – Background Information

- All 24 Maryland school systems, the SEED school, and the Maryland School for the Deaf were required to develop a Recovery Plan that addressed school reopening for the 2020-2021 year.
- A rubric was developed by the MSDE to review each local Recovery Plan. The rubric evaluates the level of completeness and the degree to which content met the stated requirement.
Part One – Rating Guidelines

Teams of trained MSDE reviewers from various Offices and Divisions will rate each required plan component. Reviewers will provide descriptive feedback justifying a rating as:

**Comprehensive**- Evidence exceeded component requirements. The component contains a high level of specificity.

**Acceptable**- Evidence met component requirements. The component was clear and specific.

**Developing**- Evidence did not meet component requirements. Component is vague or incomplete.

**Unable to Be Rated** - Component was not included in the submitted plan.
Rating Guidelines (continued)

Initial Review
Each school system submitted a recovery plan to the MSDE for initial review in August 2020. The initial review of the Recovery Plans is conducted by a panel of MSDE reviewers. All reviewers participated in training to identify evidence that is both objective and accurate and to calibrate reviews. Reviewers form a consensus on the rating of the Recovery Plan. Training of reviewers was conducted the week of August 17.

Second Review:
A second review will only be conducted on items rated as Developing or Unable to Be Rated. A school system must submit revisions to the MSDE within two weeks of receiving the initial rating. The MSDE is available to provide support to the school system to address feedback provided in the rubric. Submitted revisions will be reviewed and rubrics will be updated to reflect a revised rating. Reviews are planned to be completed the week of August 31.
<table>
<thead>
<tr>
<th>Requirement 2: Educational equity is reflected through the Recovery Plan.</th>
<th>Component is Included in the Plan</th>
<th>Areas of Promise Include Evidence Examples: Links and/or page number(s) from plan</th>
<th>Reviewers’ Consensus Rating: ● Developing ● Acceptable ● Comprehensive ● Unable to be Rated</th>
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<tbody>
<tr>
<td>Recovery Plan demonstrates that all students have equitable access to educational rigor, resources, and support designed to maximize academic success and social/emotional well-being.</td>
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<tr>
<td>Recovery Plan describes procedures and practices to ensure that there are no obstacles to accessing educational opportunities for any student.</td>
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<td>Recovery Plan prioritizes the study of data and focuses on students who face obstacles in engagement in the learning process.</td>
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Part Two: Studying the Implementation and Outcomes of Recovery Plans

• During Part Two, local school systems will monitor the implementation of their plans.
• MSDE will provide systems with training at the start of the school year, and ongoing technical support as needed throughout the term.
• At the close of the first marking period, local school systems will report to MSDE on a set of implementation measures based on data collected over the term.
• In addition, local school systems will be expected to report to MSDE at the end of the year on end-of-year implementation measures and recovery plan outcomes.
### Sample Questions

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<tr>
<td>How many instructional days has fully online distance learning been available to students?</td>
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<tr>
<td>How many instructional days has in-person instruction been available to students?</td>
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<tr>
<td>For what percent of enrolled students have attempts at contact been unsuccessful? (In other words, what percent of enrolled students have never attended class and have not responded to any other form of contact?)</td>
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<tr>
<td>What percent of eligible students were given a start-of-year diagnostic to determine current student learning (including student readiness for new content and/or learning gaps or unfinished learning)?</td>
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Sample Questions (continued)

<table>
<thead>
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<tr>
<td>By the end of the first marking period, what percent of students had access to all required</td>
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<td>instructional materials (technology, Internet access, and/or paper packets as applicable)?</td>
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<td>What percent of teachers and principals have received training on effective distance learning</td>
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<tr>
<td>practices?</td>
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<tr>
<td>What percent of non-teacher/principal instructional staff have received training on effective</td>
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<td>distance learning practices?</td>
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Sample Questions (continued)

Has the school system followed safety protocols for maintaining healthy environments with respect to cleaning and disinfection (including schools and offices where adults may be working in-person even if students are not present)?

Has the school system followed safety protocols for maintaining healthy environments with respect to shared objects (including schools and offices where adults may be working in-person even if students are not present)?

Has the school system followed safety protocols for maintaining healthy environments with respect to frequently touched surfaces (including schools and offices where adults may be working in-person even if students are not present)?
Governor Hogan: Every County School System Now Fully Authorized to Begin Safely Reopening

State Superintendent Urges School Systems to Reevaluate Mode of Instruction at the End of the First Quarter
Announces $10 Million to Help Systems Move Toward In-Person Instruction
Maryland Department of Health Issues New Benchmarks to Guide School Reopenings
Health and Safety Precautions Must Remain in Place, School Systems Should Work With Local Health Officials to Monitor Trends and Outbreaks

ANNAPOLIS, MD—As a result of improved COVID-19 health metrics across the state, Governor Larry Hogan today announced that every county school system in Maryland is now fully authorized to begin safely reopening.

The authority and decision making on safe openings continues to rest with county boards of education. Decisions should be based on a set of statewide metrics, guidelines, and benchmarks issued today by the Maryland Department of Health (MDH) in collaboration with the Maryland State Department of Education (MSDE). Find the guidance and benchmarks here.

The governor was joined by Dr. Jinlene Chan, Acting Deputy Secretary for Public Health Services at MDH, and MSDE State Superintendent of Schools, Dr. Karen Salmon. Currently, 16 of the state’s local school systems have developed plans for returning children to schools for some form of in-person instruction this calendar year, including students with special needs.

Governor Hogan and Dr. Salmon will visit school sites across the state in the coming weeks to observe systems that are bringing small groups of students back into a safe and educationally effective environment.

“As a result of our improved health metrics, every single county school system in the State of Maryland is now fully authorized to begin safely reopening,” said Governor Hogan. “Nearly everyone agrees that there is no substitute for in-person instruction. It is essential that we all work together on flexible hybrid plans to safely get some of our kids back into classrooms and into healthy and supportive learning environments.”

Watch today’s press conference.
View the slides from today’s press conference.
COVID-19 UPDATES. Maryland’s key COVID-19 health metrics continue to trend in a positive direction, and the state’s economic recovery continues.

Health Metrics:

- The statewide positivity rate is now down to 3.3%, a decline of more than 87% since it peaked on April 17 at 26.91%.
- Maryland’s positivity rate has now been under 5%, the benchmark recommended by the World Health Organization and the CDC, since June 25, and has been under 4% since August 8.
- Last week, for the first time, the COVID-19 positivity rate for all 24 jurisdictions in Maryland fell below the 5% milestone. Currently, 17 of the state’s jurisdictions have positivity rates below 3.5%.
- The positivity rate among Marylanders under the age of 35 has declined by 44% since July 23, and has now fallen below 4%, to 3.79%. The positivity rate among Marylanders 35 and older has dropped below 3%, and is now 2.97%.

Economic Recovery:

- The State of Maryland has now added 156,200 jobs in 90 days, and the state’s unemployment rate has dropped to 7.6%, which is more than 25% better than the national unemployment rate and the very best in the region.
- This week, Maryland saw its lowest number of unemployment claims since the first week of the pandemic in early March.
- More than 70% of Maryland’s economy remained open through the COVID-19 pandemic, and more than 98% of the state economy has been open since completing all Stage Two reopenings on June 19.

SCHOOLS UPDATE. Dr. Salmon announced that based on the state’s improving health metrics, she is urging local school systems to reevaluate their modes of instruction at the end of the first quarter. The state is making $10 million in grant funding available to help systems that are able to move toward in-person instruction.

“While adherence to these metrics for re-entry into classrooms are not considered requirements, I am strongly encouraging local school systems to utilize our improving numbers and the provided metrics as the driving force for the decision to return to school buildings,” said Dr. Salmon. “Health and safety precautions must remain in place once we begin to bring more students back into schools, and school systems should continue to work in conjunction with local health officials to monitor trends in the metrics and any outbreaks at area schools.”
HEALTH BENCHMARKS. Dr. Chan presented county-specific benchmarks for conversations among local officials regarding in-person instruction. These benchmarks are based on metrics that, taken together, reflect the levels of community transmission, including test positivity and case rates.

“I want to emphasize that this is guidance to aid in decision-making rather than being prescriptive, and there is flexibility that schools have to make decisions about how to best meet the educational needs of their students while taking into account the level of community spread and their capacity to implement the guidelines,” said Dr. Chan.
The following guidance is provided to assist schools to respond to the COVID-19 pandemic. The COVID-19 emergency is rapidly evolving. It is important to check the links in this document and on the resources pages frequently for updated information as well as updates to this document.

1. Definitions

**Isolation** is used to separate people *infected* with the virus (those who are sick with COVID-19 and those with no symptoms) from people who are not infected. People who are in isolation should stay home until it is safe for them to be around others. In the home, anyone sick or infected should separate themselves from others by staying in a specific “sick room” or area and using a separate bathroom (if available).

**Quarantine** is used to keep someone who might have been *exposed* to COVID-19 away from others. Quarantine helps prevent spread of disease that can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms. People in quarantine should stay home, separate themselves from others, monitor their health, and follow directions from their state or local health department.

**Close contact** relates to exposure to individuals with COVID-19 and is defined by the Centers for Disease Control and Prevention (CDC) as being within 6 feet of a person with COVID-19 for at least 15 minutes regardless of whether face coverings are being worn.

**COVID-19-like illness** is when a person has **Any 1** of the following: cough, shortness of breath, difficulty breathing, new loss of taste or smell; **OR At least 2 of the following:** fever of 100.4°F or higher (measured or subjective), chills or shaking chills, muscle aches, sore throat, headache, nausea or vomiting, diarrhea, fatigue, and congestion or runny nose. Identification of persons with COVID-19-like illness is used to exclude persons from school, to identify who should be tested for COVID-19, and to identify persons who may need close contacts quarantined.

2. Who must follow this guidance and under what authority?

All Maryland public and nonpublic schools must follow the guidance contained in this document regarding COVID-19 mitigation actions.

Additionally, the Secretary of Health and local health officers are responsible for taking steps to prevent and control the spread of infectious diseases like COVID-19 and may issue special instructions when necessary to do so. See Health-General Article, sections 18–102(b) and 18–208(b), and COMAR 10.06.01.06A. Persons in charge of schools at the local and building level must follow the instructions from the Secretary and the health officers, COMAR 10.06.01.06F(2).

Schools should work with the local health department (LHD) for additional guidance regarding safe reopening.
3. May schools reopen for in-person instruction?

Yes. School systems and nonpublic schools are encouraged to open for in-person learning where it is safe to do so. These schools are expected to follow applicable guidelines from the Maryland Department of Health, local health department, and the CDC for safe reopening of in-person instruction. Each local school system and nonpublic school, in consultation with the local health department, should review the school reopening metrics to make reopening decisions and to adjust in-person educational offerings, as necessary, when the metrics indicate an increased level of risk.

*FIG. 1: Health metrics to guide school reopening discussions*
4. Should schools and school systems develop a plan to reopen?

Yes. Each school or school system must develop a plan for reopening. The plan should address COVID-19 mitigation policy and processes. The plan should, at a minimum, address policy and procedures as recommended by the Maryland Department of Health, local health department, and the CDC. Each local school system and nonpublic school shall post their reopening plan on its website and make that information available to parents and guardians, educators, staff, the Maryland Department of Health (MDH), or local health departments upon request.

5. Do local health departments have to approve a school or school system’s reopening plan?

Local health departments are not required to review or approve the reopening plans for public or nonpublic schools. However, the MDH encourages all local school systems and nonpublic schools to collaborate with the appropriate local health department to develop plans for a safe reopening and implement these guidelines. Local health departments are encouraged to establish communication points of contact and communication processes with schools and school systems to facilitate this collaboration.

6. How should schools prepare and plan for students and staff members who may have increased risk for severe COVID-19 illness due to age or other underlying medical conditions?

The CDC indicates that older adults and persons of all ages with certain medical conditions are at increased risk for severe illness from COVID-19 and individuals with other medical conditions might be at increased risk for severe illness from COVID-19.

Older adults or persons with an underlying medical condition who are employed in the school setting should seek guidance from their health care providers regarding recommendations for working during the COVID-19 pandemic. All staff should take the necessary recommended steps to protect themselves.

Schools and school systems should follow the CDC guidance to protect employees at higher risk for severe illness through supportive policies and practices. Schools may offer options for staff at increased risk for severe illness that limit their risk of exposure to the SARS-CoV-2 (e.g., telework, modified job responsibilities). Schools may also offer options for students at increased risk that limit their risk of exposure to SARS-CoV-2 (e.g., virtual learning opportunities) as recommended by the CDC.

It is important for schools to be aware of any students who have medical conditions that make them at risk for severe COVID-19 infection. Parents and guardians should work with their child’s health care provider to determine if they are at higher risk for severe COVID-19 illness. Parents and guardians should be informed that they are expected to notify the school if their child has or develops a condition that puts them at higher risk for severe illness. The school should work with families and health care providers to develop a plan to address health concerns and determine any needed accommodations to support the student and limit their
7. How should schools address the needs of students with disabilities or special health needs?

Local school systems, and nonpublic schools as applicable, must follow the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. Strategies for meeting the needs of students with special health care needs may be found on the *Kennedy Krieger Specialized Health Needs Interagency Collaboration* web site.

Additionally, the United States Department of Education has provided guidance that may be found at the link in the Resources section of this document.

8. Should schools require universal COVID-19 testing for students and staff prior to school starting?

It is important that persons with signs or symptoms of COVID-19 and asymptomatic individuals with recent known or suspected exposure to someone with COVID-19 be tested. Universal testing refers to testing all students and staff in school settings for SARS-CoV-2, regardless of whether they have symptoms or have a known exposure to someone with COVID-19.

**CDC does not recommend universal testing** of all students and staff as a prerequisite to school attendance. **Viral testing** only provides COVID-19 status for individuals at the time of testing. One-time or universal entry testing could miss COVID-19 cases in the early stages of infection, and it could miss exposures that happen after testing. A negative test at the beginning of the school year does not mean that a student or staff member will not become infected at a later time.

While universal testing at the start of the school year is not recommended, schools may consider school COVID-19 testing as part of a systematic COVID-19 response in accordance with **CDC guidance**.

9. Should schools perform temperature checks and symptoms screening before allowing a child or staff member to enter a school building?

MDH recommends daily temperature checks and symptom screening of all students and staff prior to the start of the school day. This may be done onsite or by staff and parents at home. Schools should identify and choose the most feasible strategy to conduct these activities.

If a school or school system chooses to have parents and staff conduct daily screenings at home, schools should send frequent reminders to do so. Parents/staff should be asked to identify: 1) symptoms, and 2) close contact/potential exposure as outlined in **MDH “Guidance for Temperature and Symptom Screening in Schools.”** Students, educators or other school staff should not enter a school if they have symptoms of COVID-19 (even if not tested or
confirmed) or have been in contact with someone with COVID-19 or with COVID-19-like illness in the last 14 days.

Temperature checks and symptom screening of students and staff may also be conducted upon arrival to school by school personnel using the procedures recommended by the CDC for child care. Please refer to MDH “Guidance for Temperature and Symptom Screening in Schools” for additional recommendations and tools for conducting temperature checks and symptom screening.

It is important for schools and school systems to stress and reinforce frequently to parents and guardians that students and staff who are sick or have any symptoms of COVID-19 should not attend school or work. Schools should make it a priority to provide parents and staff with the information necessary to make the appropriate decisions and the expected processes for communication regarding absence for illness which may be related to COVID-19 symptoms.

When implementing procedures for temperature checks and symptom screening, it is important that schools maintain confidentiality in compliance with U.S. Department of Education guidance regarding Family Educational Rights and Privacy Act (FERPA) or individual school privacy policies as applicable.

10. What physical distancing measures should schools use for students and staff?

As part of their reopening plans’ COVID-19 prevention and mitigation strategies, MDH recommends all schools implement strategies to ensure that students, educators and other school staff maintain 6 feet of physical distance while in the school building, on school grounds and on school buses to the greatest extent possible. Social distancing strategies should also include education schedules that create and maintain student or student/teacher cohorts and procedures to limit mixing of students, staff, and cohorts.

The CDC recommends schools implement policies to maintain six feet (2 arm lengths) between students, staff and others who are not living in the same household. Distancing guidelines apply both indoors and outdoors. The CDC also recommends that when maintaining 6 feet of distance is not feasible, to try keeping as close to 6 feet apart as possible, recognizing that the closer you are, the more likely it is for respiratory droplets to be passed between people. While there is some evidence that shorter distances may be adequate, MDH requires that schools make all reasonable efforts to implement the 6-foot distancing rule to the greatest extent possible.

In situations where maintaining physical distance is difficult, it is especially important to wear cloth face coverings. In areas where it is difficult for individuals to remain at least 6 feet apart (e.g., reception desks), schools can consider additional strategies such as installing physical barriers, such as sneeze guards and partitions. Schools can also consider using outdoor space, weather permitting, to enable social distancing. There are many strategies recommended by MDH to practice physical distancing in the school setting. These include but are not limited to:

- Stagger arrival and dismissal time for students by group;
- Develop and maintain cohorts of students by classroom throughout the day to limit mixing of groups of students;
Cluster lockers near the classroom for each cohort to limit hallway movement of large groups of students;
- Reduce the volume of material to be carried by students to limit the need for use of lockers;
- Assign each student cohort to one designated classroom and have teachers move between classrooms;
- Avoid mixing cohorts of students at arrival and dismissal time or in shared areas which may involve using multiple entrances to the building;
- Prohibit parents/guardians and other visitors from entering the building unless necessary;
- Have teachers structure their teaching to maintain a distance of 6 feet between children;
- Limit the use of shared space (breakrooms) for staff unless it can be cleaned and disinfected and 6 feet distance can be maintained when more than one person is using the space;
- Limit use of the cafeteria by having meals in classrooms;
- Create 6 feet distance between desks in the classroom;
- Rotate the use of shared areas (cafeterias, gymnasiums, auditoriums, breakrooms) by different individuals or cohorts; and
- Repurpose large areas in the nonpublic school (e.g., cafeteria, auditorium) to become classrooms.

NOTE: The MDH does not have specific guidance regarding class size. Each school should determine how the physical distancing requirements can be met. This may require reducing class size. Local school systems and nonpublic schools should refer to the Governor’s Roadmap to Recovery Plan for requirements that may impact class size.

The link in the resources section of this document from the American Academy of Pediatrics gives additional guidance on distancing for Pre-K, elementary, secondary, special education, buses, playgrounds, and hallways. The National Association of School Nurses recommends that installation of physical barriers like partitions or sneeze guards should be considered when physical distancing is not possible.

11. May children use the playground available at the school?

Children may use playground equipment only if social distancing is maintained, and if the playground structure is able to be cleaned according to CDC guidance. Other outdoor toys should be cleaned and sanitized between groups (e.g., sandbox toys, tricycles). Only one classroom of children may use the playground at a time. If the playground is used, it should be cleaned at least daily. Children should wash their hands immediately after playing on the playground. Use the cleaners typically used at your facility. Guidance is available for the selection of appropriate sanitizers or disinfectants.

12. If a student, educator, or other school staff member is a laboratory confirmed case of COVID-19 or has COVID-19-like illness, what should the school do?
The school should follow the MDH guidance entitled “Response to a Laboratory Confirmed Case of COVID-19 and Persons with COVID-19-like illness in Schools” for exclusion, isolation, quarantine, communication and notification processes. Per the above guidance, each school should identify a room or other area for isolation of persons who become ill during the day that is separate and distinct from rooms that are used for other purposes. The isolation room/area must also provide the appropriate level of safety and supervision for an ill student.

If a student develops symptoms of COVID-19 during the school day, safely isolate the student. Contact the student’s parent/guardian and arrange for safe transportation to a healthcare facility or home, as soon as possible. It is important that parents are informed of the policy regarding the timeframe for when to pick up an ill student.

If an educator or other nonpublic school staff member develops symptoms of COVID-19 during the school day, the person must vacate the premises, as soon as possible.

MDH recommends schools provide regular updates to students’ parents and guardians on the school’s COVID-19 status and inform students, parents and guardians, and staff in a timely fashion about COVID-19 cases and outbreaks in the school while following federal and state confidentiality laws.

Health General, sections 18-102(b) and 18-208(b) require the Secretary of Health and county health officers to take actions to prevent the spread of contagious diseases like COVID-19. The regulations implementing these sections also authorize the Secretary and health officers to issue special instructions for control of a disease and require persons in charge of schools to comply with directives issued by the Secretary and health officers. See COMAR 10.06.01.06A, .06F(2). If indicated, a classroom or the entire school may need to be closed as part of the quarantine procedure instructions.

The local health department will work with a school to determine if a school must close and the length of closure according to the MDH guidance.

13. If a student, educator, or other school staff member has a laboratory confirmed case of COVID-19 or has COVID-19–like illness, how long should they be excluded from work or school?

The person with laboratory confirmed COVID-19 or COVID-19–like illness may return to work or school when he or she has met the CDC criteria for discontinuation of home isolation:

- At least 10 days have passed since symptom onset, AND
- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications, AND
- Other symptoms have improved.

The above guidance is referred to as a symptom–based strategy for release from isolation. Testing to clear a person for return (i.e., a test–based strategy) is no longer recommended.
If the student, educator or other school staff member with laboratory confirmed COVID-19 has never had any symptoms, he or she may return to work or schools when at least 10 days have passed since the date of the person’s first positive COVID-19 diagnostic test.

**Note:** If the student, educator or other school staff member with COVID-19–like illness receives a negative test result or has a specific alternative diagnosis, they may return to work or school once they are fever-free for 24 hours without the use of fever-reducing medication, their symptoms have improved and the criteria in the [Communicable Diseases Summary](#) have been met as applicable. If there is a suspicion or concern that the negative test is not accurate, or symptoms are not improving, the person should work with their health care provider to determine if retesting or a longer period of isolation is required.

14. When can a person who is quarantined at home due to a household member with laboratory confirmed COVID-19 or COVID-19–like illness return to school?

Close contacts of a person with COVID-19 or COVID-19–like illness who was in the school building should be identified by the school and the local health department for the purpose of making quarantine recommendations. Close contacts of a person with COVID-19 or COVID-19–like illness who was in the school building should not attend school, work in or visit a school building for 14 days after the date of their last exposure according to CDC and MDH guidance.

Persons who have a household contact who is a confirmed case of COVID-19 or who has COVID-19–like illness may return to work or school 14 days after the household contact is released from isolation according to [CDC guidance](#) for discontinuation of isolation for persons with COVID-19 not in healthcare settings. The person must undergo this additional 14 day quarantine because the person could have been infected on the final day of the household member’s isolation.

The above guidance assumes that close contacts do not develop symptoms of COVID-19 at any time during their quarantine. If a person develops symptoms, the person may be considered to have COVID-19–like illness and the person should contact their health care provider to obtain a COVID-19 test and to determine how long the person needs to remain excluded from work or school.

15. What policy or procedure should be used regarding staff members and families that are travelling?

MDH strongly recommends that all Marylanders refrain from nonessential travel outside of Maryland due to the recent increase in COVID-19 infections in other states. Any Marylander returning from out-of-state travel should get tested for COVID-19 promptly upon arrival in Maryland. Any Marylander who travels to a state with a COVID-19 test positivity rate above 10% should get tested and self-quarantine at home until the test result is received. The District of Columbia and the Commonwealth of Virginia are exempt from this recommendation. A list of state COVID-19 test positivity rates can be found using the [CDC COVID-19 Data Tracker](#).
Essential workers are exempt from the quarantine recommendation if they are returning or traveling to Maryland to perform essential work, as well as employee commuters who leave/enter the state on a daily basis and have work-based COVID-19 screening procedures. Please refer to the MDH Travel Advisory for additional details.

CDC recommends that travelers avoid all nonessential international travel because of the COVID-19 pandemic. Persons returning from international travel should follow CDC guidance regarding quarantine following travel.

Schools and school systems should have a process for communicating to parents the expectation that they follow this advisory and to communicate with the school regarding travel and COVID-19 test results after travel.

16. How will contact tracing be conducted in the school if a student, educator or other school staff member tests positive for the COVID-19 virus?

While the contact tracing process identifies when a person attends or works in a school setting, families, educators or other school staff members who have tested positive should inform the school, as soon as possible to begin the contact tracing process. When a local health department is notified of a positive COVID-19 virus lab result the contact tracers will work with the local health department and the affected person to identify close contacts to be notified to quarantine. The school should work with the contact tracing staff to identify close contacts in the school setting. It is important that schools maintain confidentiality during the contact tracing process in accordance with the U.S. Department of Education guidance regarding the Family Educational Rights and Privacy Act (FERPA) or individual school privacy policies as applicable.

17. Should the school let families know if a student, educator or other school staff member tests positive for COVID-19?

The school should follow the communication and notification procedures in the guidance entitled “Response to a Laboratory Confirmed Case of COVID-19 and Persons with COVID-19-like illness in Schools.” It is important that schools maintain confidentiality during the contact tracing process in accordance with the U.S. Department of Education guidance regarding the Family Educational Rights and Privacy Act (FERPA) or individual school privacy policies as applicable.

18. Should children and adults wear cloth face coverings while in school?

Yes. Cloth face coverings are non-medical coverings that protect others if the wearer has COVID-19 and may be asymptomatic. There are many types of cloth face coverings. For school use, there is not a specific type of cloth face covering that is recommended. However, face coverings should be worn as recommended by the CDC. Cloth face coverings must be worn in schools according to the MDH/MSDE guidance. The specific requirements are below:

- All students age 5 years and above, school staff or other adults, and bus drivers must wear a cloth face covering while on a school bus or school–provided transport, while in the school building, and on school grounds when not contraindicated due to a
medical condition, developmental immaturity, disability, or other health or safety concerns as indicated by the CDC;

- Other adults must wear cloth face coverings when they must enter the school building or school grounds when not contraindicated due to a medical condition, disability, or other health or safety concerns as indicated by the CDC; and

- The use of cloth face coverings is most important at times when physical distancing measures cannot be effectively implemented, especially when indoors.

**NOTE:** Cloth face coverings should not be worn by children under the age of 2 years and anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.

**19. Should children in pre-kindergarten programs wear cloth face coverings?**

The use of cloth face coverings is recommended for pre-kindergarten students below age 5 years on the school bus, in the school building, and on school grounds when not contraindicated due to a medical condition or developmental or safety considerations. Schools should follow the MDH/MSDE “Guidance for Use of Cloth Face Coverings in Child Care Programs” when considering the use of a cloth face covering in students below age 5 years.

**NOTE:** Cloth face coverings should not be worn by children under the age of 2 years and anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.

**20. How should school buses be cleaned and disinfected?**

To clean and disinfect school buses or other transport vehicles, see guidance for bus transit operators. If buses will be used to transport separate groups of students on the same day, schools should clean and disinfect the bus between groups when feasible.

**21. How should physical distancing and other mitigation practices be done on the school bus?**

The CDC provides guidance (below) regarding strategies to reduce the risk of transmission on buses:

- Drivers should practice all safety actions and protocols as indicated for other school staff (e.g., hand hygiene, cloth face coverings).
- Drivers can create distance between children on school buses, including seating children one student per row facing forward and skipping rows between students. However, students who live in the same household may sit together if needed. Schools may consider alternative strategies to accommodate the reduced number of students on buses, such as staggered pick up and drop off times or additional bus routes.
- Schools should consider having spare, clean cloth face coverings available to ensure all students wear cloth face coverings on the school bus.
- Drivers can open bus windows to increase circulation of outdoor air but **should ensure that doing so does not pose a safety or health risk (e.g., risk of falling).**
During arrival and dismissal, schools may provide physical guides, such as signs and tape on the sidewalk, to ensure that students and school staff remain at least 6 feet apart while waiting for transportation.

22. Do students still need to have all the usual vaccinations if school is remote-only?

Yes. School immunization requirements remain in effect whether students are in the physical school building or are participating through virtual learning. Therefore, school officials should conduct assessments of school immunization records prior to the start of the 2020–2021 school year.

In addition, the regulations regarding temporary admission and retention remain in effect at this time. Students that do not have the required vaccinations on the first day of school (i.e. virtual and in-person school) must demonstrate proof of vaccination, positive titer results, or proof of a vaccination appointment to occur within 20 calendar days.

23. How should schools perform cleaning and disinfecting?

School cleaning should be done according to the CDC “Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes.” The guidance provides information on EPA registered products effective against the COVID-19 virus.

When using shared spaces or classrooms and rotating cohorts into and out of the space, the space should be cleaned and disinfected between cohorts of students.
HELPFUL RESOURCES

Centers for Disease Control and Prevention

People Who Need to Take Extra Precautions. - People at Increased Risk for Severe Illness

· Older Adults

· People with Certain Medical Conditions.

Symptoms of Coronavirus

Clinical Presentation in Children

People Who Are at Higher Risk for Severe Illness

Public Health Guidance for Community Related Exposure

Interim Guidance for Businesses and Employers Responding to Coronavirus 2019

Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings

Travel Guidance

FAQs for Schools

School Cleaning Guidance

School Bus Guidance
Social Distancing

Maryland State Department of Education

Maryland Recovery Plan

Guidance for Use of Cloth Face Coverings in Schools

COVID-19 Guidance for Child Care Facilities

Response to a Laboratory Confirmed Case of COVID-19 and Persons with COVID-19-like illness in Schools, Child Care Programs, and Youth Camps

Student Transportation
http://www.marylandpublicschools.org/about/Pages/DBS/Pupil-Transportation/index.aspx

Maryland Public Secondary School Athletic Association Guidance
https://www.mpssaa.org/assets/1/6/MPSSAA_Roadmap_For_Return_of_Interscholastic_Athletics_6.29.20_(1).pdf

Maryland Public Secondary School Athletic Association Administrative Decision Memo
https://www.mpssaa.org/assets/1/6/MPSSAA_Fall_and_Winter_Competition_Seasons_Postponed_8.2.pdf?6564

Maryland Department of Health

Coronavirus Disease 2019 (COVID-19) Outbreak
https://coronavirus.maryland.gov/

Maryland State Local Health Department COVID-19 Contacts

Frequently Asked Questions: Coronavirus Disease 2019 (COVID-19) and Older Adults:

Environmental Protection Agency
Disinfectants for Use Against SARS-CoV-2 (COVID-19)
https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19

United States Department of Education

Non–Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters

Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak (March 2020)

Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities

FERPA and the Coronavirus Disease 2019 (COVID-19)

Other

Face Covering Resource for Parents
https://www.healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Cloth-Face-Coverings-for-Children-During-COVID-19.aspx

National Association of School Nurses
https://www.nasn.org/nasn/nasn-resources/practice-topics/covid19

National Academies of Science Engineering and Medicine– Webinar on social distancing
https://www7.nationalacademies.org/humanrights/CHR_185890.htm – 22K

YouTube Quick Videos on social distancing (15–30 seconds)
http://coronavirus.adcouncilkit.org/all-assets/?crb_message-category=75

American Academy of Pediatrics
· Guidance for School Re-Entry:


National Association for Pupil Transportation
· COVID-19: https://www.napt.org/covid
· STARTS Task Force https://www.napt.org/starts


Association of State and Territorial Health Officials https://www.astho.org/COVID-19/School-Reopening-Planning/?utm_campaign=phpartners&utm_medium=email&utm_source=govdelivery

Response to a Laboratory Confirmed Case of COVID-19 and Persons with COVID-19-like Illness in Schools

Updated August 28, 2020

This guidance accompanies the “Decision Aid: Exclusion and Return for Laboratory Confirmed COVID-19 Cases and Persons with COVID-19-like Illness in Schools, Child Care Programs, and Youth Camps.”

This guidance applies to persons with a laboratory confirmed case of COVID-19, regardless of whether they have symptoms, and persons with symptoms of COVID-19. Exclusion, quarantine and return to school for persons with laboratory confirmed COVID-19, and persons with symptoms of COVID-19 is based on CDC and Maryland Department of Health/Maryland State Department of Education guidance and is to be implemented by schools and local school systems in collaboration with the local health department.

For the purposes of this guidance, COVID-19-like illness is defined as:

1. Any 1 of the following: cough, shortness of breath, difficulty breathing, new loss of taste or smell, OR
2. At least 2 of the following: fever of 100.4°F or higher (measured or subjective), chills or shaking chills, muscle aches, headache, sore throat, nausea or vomiting, diarrhea, fatigue, and congestion or runny nose.

The guidance below is meant to supplement, where necessary, current communicable disease outbreak investigation processes, current school health services illness management processes, and current local health department COVID-19 response processes. The guidance below is designed to expedite notification, isolation, and quarantine of school staff and/or students, as indicated, when a person notifies the school they/their child has a laboratory confirmed case of COVID-19, regardless of whether the person has symptoms, or exhibits symptoms of COVID-19. The specific processes to implement this guidance within each school are to be developed and carried out as a collaboration between the school and the local health department.
1. **Communication**

   a. Schools should develop processes to inform staff and parents that they are expected to notify the school as soon as they are made aware that they/their child has tested positive for the virus that causes COVID-19 or that they/their child has been exposed to a person who is confirmed to have COVID-19;
   
   b. Schools should communicate to parents the expectation that ill students MUST be picked up within a specified period of time;
   
   c. The school should have a plan to ensure confidentiality regarding the process for parents to notify the school of a positive test result, illness or exposure to ensure confidentiality;
   
   d. Schools should have a plan to collaborate and coordinate with the local health department regarding school contact tracing procedures including determining the role of the school nurse, the school administrator, and the local health department; and
   
   e. Schools should develop communication templates for notification of close contacts of persons who are confirmed to have COVID-19 and for close contacts of persons with COVID-19-like illness.

2. **Notification of contacts who must quarantine**

   a. The local health department should lead the process of contact tracing;
   
   b. The school should work with the local health department to identify persons who may have had close contact with the person testing positive for COVID-19 or close contact with the person with COVID-19-like illness;
   
   c. Schools should provide written notification to all identified contacts. The notification should include the following:
      
      i. When to seek medical care
      ii. How to monitor for symptoms
      iii. Who to contact and how to contact them if they develop symptoms of COVID-19 while under quarantine
      iv. The projected length of quarantine if they remain asymptomatic
      v. Plan for maintaining remote learning for those who remain well enough to engage in learning while under quarantine
      vi. Information about local COVID-19 testing sites

3. **Isolation, Exclusion, Quarantine, and Return to School**

   a. If a student or school staff member develops symptoms of COVID-19 during the school day, the school should:
      
      i. Safely isolate the person in the designated isolation area and place a surgical mask on the person if they are not wearing a cloth face covering as appropriate;
ii. The school health services staff member should don the appropriate PPE and conduct the appropriate determination of the student’s condition based on presenting symptoms;

iii. Begin the process for the person to vacate the school as soon as possible;

b. When a school is informed of a laboratory confirmed case of COVID-19 in a student or school staff member, regardless of whether the person has symptoms, or learns of a student or school staff member with COVID-19-like illness, the school should begin the process for identifying close contacts and begin the notification process in collaboration with the local health department;

c. The school should follow the “Decision Aid: Exclusion and Return for Laboratory Confirmed COVID-19 Cases and Persons with COVID-19-like Illness in Schools, Child Care Programs, and Youth Camps” (see attachment);

d. The school should also follow the instructions from the local health department for all matters regarding exclusion, quarantine, and return to school for a person with a positive test for COVID-19 or who has symptoms of COVID-19 and those who have had close contact with a person with COVID-19 or COVID-19-like illness; and

e. If the number of laboratory confirmed cases of COVID-19 or COVID-19-like illness meets the definition of an outbreak, the response decisions, including possible school closure, will be made by the local health department.
**Decision Aid: Exclusion and Return for Laboratory Confirmed COVID-19 Cases and Persons with COVID-19-like Illness in Schools, Child Care Programs, and Youth Camps**

**For the purposes of this decision aid, COVID-19-like illness is defined as:** Any 1 of the following: cough, shortness of breath, difficulty breathing, new loss of taste or smell, OR At least 2 of the following: fever of 100.4° or higher (measured or subjective), chills or shaking chills, muscle aches, sore throat, headache, nausea or vomiting, diarrhea, fatigue, and congestion or runny nose.

**Person (child, care provider, educator, other staff) with 1 new symptom not meeting the definition of COVID-19-like illness.**
- Exclude person and allow return when symptoms have improved, no fever for at least 24 hours without fever-reducing medication, **AND** criteria in the Communicable Diseases Summary have been met as applicable. **If person develops symptoms of COVID-19-like illness, follow processes below for person with COVID-19-like illness.**

**An asymptomatic person (child, care provider, educator, other staff) who tests positive for COVID-19.**
- The asymptomatic person should stay home for 10 days from positive test.

**Person (child, care provider, educator, other staff) with COVID-19-like illness:**
- Exclude person and recommend that they talk to their health care provider about testing for COVID-19 or whether there is another specific diagnosis.
- The person should isolate pending test results or evaluation by their health care provider.
- Close contacts of the ill person should quarantine per CDC guidelines.

**Person has positive test for COVID-19.**
- The ill person should stay home at least 10 days since symptoms first appeared **AND** until no fever for at least 24 hours without fever-reducing medication **AND** improvement of other symptoms.

**Person does not receive a laboratory test or another specific diagnosis (e.g. influenza, strep throat, otitis) by their health care provider.**
- The ill person should stay home until symptoms have improved, no fever for at least 24 hours without fever-reducing medication, **AND** criteria in the Communicable Diseases Summary have been met as applicable.
- The person should consider being tested/retested for COVID-19 if symptoms do not improve.

**Person has negative test for COVID-19.**
- Health care provider documents that the person has another specific diagnosis (e.g. influenza, strep throat, otitis) or health care provider documents that symptoms are related to a pre-existing condition.

**Close contacts should stay home for 14 days from the date of last exposure even if they have no symptoms or they have a negative COVID-19 test done during quarantine.**

**Close contacts DO NOT need to stay home as long as they remain asymptomatic.**

Mandated Calendar Requirements

School systems are required to submit calendar days and hours every year. All school systems’ indicated compliance with the mandated hours and days in the Annotated Code and COMAR.

During the review of the submitted Recovery Plans and additional requests for specific hours of synchronous and asynchronous instruction, it was determined that mandated days and hours were not being met in all school systems.
Md. Ann. Code, Ed. Art., §7-103 a(2)

(a) Except as provided in subsections (b), (e), and (f) of this section, each public school under the jurisdiction of a county board:

(1) (i) Shall be open for pupil attendance for at least 180 actual school days and a minimum of 1,080 school hours during a 10–month period in each school year; or

(ii) If normal school attendance is prevented because of conditions described in subsection (b) of this section, shall be open for at least 1,080 hours during a 10–month period;

(2) Shall be open for pupil attendance a minimum of 3 hours during each school day; and

(3) May not be open on Saturdays, Sundays, or holidays in order to meet the 180–day or 1,080–hour requirement of this subsection.
COMAR 13A.02.01.04 Attendance

.04 Length of the School Year

A. Schools shall be open a minimum of 180 days per year. In implementing Education Article, §7-103, Annotated Code of Maryland
Synchronous Learning

Acceptable to include in synchronous learning (remote learning that happens in real time with the interaction between the teacher and students and occurs in a virtual classroom setting)

- Direct teacher instruction
- Targeted small group instruction
- Teacher led – large/small group discussions
- Collaborative groups
- Assessment/checking for understanding
- Office hours that include meeting with students
- Guided instruction
Asynchronous Learning

Asynchronous learning

- Digital platform instruction
- Pre-recorded video lessons
- Resource videos
- Assigned readings
- Independent practice
- Paper/pencil learning activities
- Rotation/center activities
- Posted assignments
## Student Engagement Projection - All Grade Bands - August 2020

<table>
<thead>
<tr>
<th>Grade Band</th>
<th>Days per week</th>
<th>Hours per day</th>
<th>Total hours per week</th>
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### Allegany County
- PreK: 5 days, 1.17 hours per day, 5.85 total hours per week
- Grades K-2: 5 days, 2.33 hours per day, 11.65 total hours per week
- Grades 3-5: 5 days, 2.33 hours per day, 11.65 total hours per week
- Grades 6-8: 5 days, 3.50 hours per day, 17.50 total hours per week
- Grades 9-12: 5 days, 3.33 hours per day, 16.55 total hours per week

### Anne Arundel County
- PreK: 4 days, 4.00 hours per day, 16.00 total hours per week
- PreK-2: 1 day, 2.00 hours per day, 2.00 total hours per week
- Grades 3-5: 4 days, 4.25 hours per day, 17.00 total hours per week
- Grades 3-5: 1 day, 1.50 hours per day, 1.50 total hours per week
- Grades 6-8: 4 days, 4.00 hours per day, 16.00 total hours per week
- Grades 6-8: 1 day, 2.00 hours per day, 2.00 total hours per week
- Grades 9-12: 4 days, 4.50 hours per day, 18.00 total hours per week
- Grades 9-12: 1 day, 2.00 hours per day, 2.00 total hours per week

### Baltimore City
- PreK: 5 days, 1.30 hours per day, 6.50 total hours per week
- K: 5 days, 2.60 hours per day, 13.00 total hours per week
- Grades 1, 2: 5 days, 3.80 hours per day, 19.00 total hours per week
- Grades 3-5: 5 days, 3.80 hours per day, 19.00 total hours per week
- Grades 6-8: 5 days, 5.25 hours per day, 26.25 total hours per week
- Grades 9-12: 5 days, 5.40 hours per day, 27.00 total hours per week

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**TOTAL Hours per week**

Baltimore County: 8.75

Calvert County: 11.18
## Student Engagement Projection - All Grade Bands - August 2020

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### Total

| Total Hours per week | 23.75 | 26.25 | 28.75 | 30.00 |

### Grades K-12

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### Grades 9-12

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State Board Update

State Board Update September 1, 2020

September 1, 2020
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### Student Engagement Projection - All Grade Bands - August 2020

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### Harford County

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## Student Engagement Projection - All Grade Bands - August 2020

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Total (Synchronous): 12 hours per week
Total (Asynchronous): 12 hours per week

State Board Update September 1, 2020
## Student Engagement Projection - All Grade Bands - August 2020

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**Synchronous**

**Asynchronous**

State Board Update September 1, 2020
### Student Engagement Projection - All Grade Bands - August 2020

#### Synchronous

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#### Asynchronous

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**TOTAL Hours per week**

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**State Board Update September 1, 2020**
### Student Engagement Projection - All Grade Bands - August 2020

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### Synchronous

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### TOTAL Hours per week

- Wicomico County: 10.50
- Worcester County: 23.00
- TOTAL: 30.00

**State Board Update September 1, 2020**
## Recommendations

### Synchronous Learning

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### Asynchronous Learning

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Recommendations

✓ Schools must be open for students at least 180 school days.

✓ All schools must include at least a total of six hours per day.

✓ A school day for each local school system must include the recommended minimum number of hours of synchronous instruction for each grade band per day, five days per week as indicated in the table.

✓ Half day pre-K school day for each local school system must include a minimum of 1.5 hours of synchronous instruction per day, five days per week.

✓ School systems that have indicated that they are not returning students in person until second semester should reevaluate their reopening plans by the end of the first quarter (after nine weeks).

✓ Recommended minimum hours need to be implemented by September 28.
Special meeting of the State Board held on Monday, August 24, 2020

The State Board met on the morning of Monday, August 24 to receive reports on the status of the department’s review of the education recovery and reopening plans received from local school systems by the August 14 deadline. The board discussed their interests and concerns regarding the local plans including requests for disaggregated data, based on race, gender, and income wherever possible. The Board also questioned whether the plans were detailed enough regarding class schedules with schedules of synchronous instruction for all students as well as small groups of students and for tutoring. Dr. Salmon emphasized that these plans must be comprehensive and clear to parents and other members of the public regarding each of the required plan elements, including class schedules. The board also discussed their interest in requiring a minimum of 3.5 hours of daily synchronous instruction, noting that several local plans did not appear to do so. Board President Crawford indicated that this issue would be taken up at the next day’s regular meeting of the board.

Agenda (8/24/2020)

State Board Meeting (August 25, 2020) Agenda

Opening of Meeting

Board President Clarence Crawford convened the teleconference meeting and was joined by all members, including: Vice President Jean Halle, Warner Sumpter, Joan Mele-McCarthy, Gail Bates, Vermelle Greene, Charles Dashiell, Jr., Rachael McCusker, Lori Morrow, Shawn Bartley, Susan Getty, Holly Wilcox, and student board member Jason Wu.

Notice of Special Meeting on Sept. 1

Board president Crawford began Tuesday’s meeting by informing the board of the decision to defer further discussion and any decisions concerning the local recovery and reopening plans, including the issue of minimum hours of synchronous instruction, until a special meeting to be held on Tuesday, September 1.

Public Comments

The board heard public comments provided by Cheryl Bost, President of the Maryland State Education Association, who raised concerns and objections concerning the modification of the recovery plans to include the 3.5 hours of synchronous instruction and the pending teacher licensure and preparation regulations; and Theresa Mitchell Dudley, President of the Prince George’s County Education Association, who raised concerns regarding the impact of the pending regulations on provisional teachers.
Student Discipline in Early Grades

The State Board received a briefing from Dr. Dara Shaw, MSDE’s Director of Research, on the results of the department’s analysis of the implementation of the law restricting the use of suspensions and expulsions in prekindergarten through second grade. This briefing follows an earlier presentation in June, responding to the board’s request for additional data.

Dr. Shaw described the legislation passed in 2017 (HB 425/SB 651) which prohibits a child enrolled in a public prekindergarten program, as defined by the bill, or in kindergarten, first, or second grade from being suspended or expelled from school, subject to exceptions. The bill allows a student in the specified grades to be expelled if required by federal law. It allows a student to be suspended for up to five school days if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports. The law also specifies the interventions and supports that must be provided to students who are suspended in these grades.

The presentation highlighted the following findings:

- From 2017 to 2018, the fraction of removals for disruption decreased, but not dramatically, from 33 to 26 percent.
- From 2017 to 2018 the fraction of removals for disruption decreased much more for White students (15 percentage points) compared to Black students (4 percentage points).

Board president Crawford described the role of the board in assessing the effectiveness of its regulations in achieving the intended policy outcome of the legislation, to identify areas for improvement if needed, and whether the board should advocate for more resources to assist the state and local school systems with programming. Board member Bartley noted the regional differences in cultural competency and sensitivity and therefore the need for localized strategies to address racial disproportionality in student discipline.

Memo & Presentation

Equal Opportunity Schools Partnership

The Board received a report on the partnership between Maryland public schools and Equal Opportunity Schools (EOS), a national nonprofit organization established to increase the participation of low-income students and students of color in advanced placement (AP) courses.

The presentation by Eddie Lincoln, Chief Partnership Development Officer at Equal Opportunity Schools, described EOS’s work in Maryland. He highlighted the transformational change that EOS strives to achieve to close gaps in student access to college level classes. MSDE’s Dr. Dara Shaw presented the results of a study on the impact of EOS on the participation rate and exam performance of underrepresented students on AP exams.
Key findings of the study include:

- The AP course participation rate of underrepresented students in schools that partnered with Equal Opportunity Schools (EOS) were on average 7 percentage points higher than the rate in similar schools that did not partner with EOS.
- The underrepresented students benefiting from greater participation in AP courses through the EOS program achieve an AP exam pass rate and average exam scores similar to, not lower than, students in similar schools.

Dr. Shaw stressed that these are very strong findings in support of the effectiveness of the EOS program. Board members expressed their appreciation and support for the successful outcomes being achieved through the EOS partnership.

**Memo & Presentation**

**KRA Waiver**

The State Board approved the department’s request to waive the otherwise required administration of the kindergarten readiness assessment (KRA) in the upcoming 2020-2021 school year. MSDE staff presented the request, and rationale for the request by the 24 local superintendents, that due to all school systems beginning with a virtual program and given that Maryland remains in Stage 2 based on the Governor's Executive Order, it is not possible to administer the entire KRA virtually and to screen for all of the KRA skills, knowledge, and behaviors before the November 1 end of the administration window.

**Memo**

**Educator Licensure Regulations**

The State Board approved the request publish amended regulations governing educator licensure under COMAR 13A.12.01-.07. The amended regulatory language is described as aligned with MSDE’s comprehensive plan to increase the rigor and accountability of educator certification and preparation programs in Maryland. Assistant Superintendent Sarah Spross provided a detailed overview of the enormous amount of deliberation by both the State Board and Professional Standards and Teacher Education Board (PSTEB) over the past 2 years.

Board member McCusker requested clarification on whether PSTEB had seen the proposed regulations prior to today’s requested vote by the State Board. Ms. Spross responded that the State Superintendent’s advisory committee is the source of these changes, that either the State Board or PSTEB may initiate regulations, and that the State Board may by a three-fourths majority vote override the opposition of PSTEB to proposed regulations. Ms. Spross noted that changes are informed by feedback from PSTEB and many other stakeholders, either by those represented on Dr. Salmon’s advisory group or through public comments.

**Memo & Regulations**
**Educator Preparation Program Regulations**

The State Board approved the request to publish the repeal and replacement COMAR 13A.07.06, the regulations governing Programs for Professionally Licensed Personnel. The amended language is described as aligned to the Maryland State Department of Education’s (MSDE) comprehensive plan to increase the rigor and accountability of educator certification and preparation programs in Maryland. Ms. Spross described the challenge of incorporating by reference the most recent versions of national standards, several of which were very recently finalized and therefore reflected in this proposal. (The standards being incorporated by reference are listed on pp. 2-4 of the proposed regulation.)

The board engaged in lengthy discussion concerning amendments to the proposed regulations, and several amendments were adopted by the Board.

**Student Records Manual Regulations**

Assistant Superintendent Mary Gable presented the request to approve the adoption of the 2020 updated version of the Maryland Student Records Manual, noting that the manual will not be updated as initially proposed regarding a new format for the student record card. This change was retracted in light of the many other challenges in the upcoming school year in response to the COVID-19 pandemic. The regulations being adopted are under COMAR 13A.08.01.01E and 13A.08.02.02.

**Sexual Misconduct Employer History Regulations**

The State Board granted final approval of the regulations proposed to govern the implementation of legislation enacted in 2019 (HB 486) regarding the child sexual abuse and sexual misconduct history reviews required under section 6-113.2 of the Education Article.

Under House Bill 486, the law establishes a process, including requirements for specific documentation regarding whether an individual has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct,” for the hiring of public school and nonpublic school employees who have direct contact with minors. This law applies to local boards of education, nonpublic schools, and contracting agencies that contract with a county board of education or nonpublic school to provide a service to a school or students.

Assistant Superintendent Sarah Spross provided a thorough review of the regulations governing MSDE’s role in implementing procedures for disciplinary proceedings and the assessment of penalties against an applicant, employee, contracting agency, or school administrator for willful violations of the requirements of the statute. Ms. Spross shared that MSDE fully appreciates how burdensome this law is on school employers, that MSDE has responded to approximately 5000 employee status inquiries and more than 1500 employer requests, and in light of these issues MSDE has supported legislation in 2020 to amend the law. However, this legislation did not pass before the conclusion of the recent legislative session.

**Memo & Regulations**
State Board Meeting Calendar for 2021

The State Board approved its monthly meeting calendar for the 2021 calendar year. Board members discussed the potential need to schedule additional meetings during the weeks between the Oct. 2020 and Dec. 2020 meeting and between the Dec. 2020 and Jan. 2021 meeting.

Meeting Calendar

State Board Public Engagement

Board member Racheal McCusker led a discussion arising from her interest in the board engaging directly with external stakeholders, specifically on the issue of social emotional learning policy and practices in the context of the COVID-19 pandemic. She responded to board member questions by clarifying that she envisions a virtual roundtable meeting to discuss input from stakeholders rather than a formal workgroup.

State Board Committee Updates

Board Vice President Jean Halle provided a brief update on the State Board’s Digital Learning Committee, which she chairs. She noted that if there is any silver lining to the pandemic it is that Maryland already had digital learning standards and 2 consortia in place. Dr. Carol Williamson, MSDE’s Chief Academic Officer, provided a status report on the status of the recommendations of the board’s workgroup and the department’s digital learning initiatives and work of the department’s longstanding Digital Learning Advisory Committee. The plan going forward is to have the department report on the progress on the numerous board workgroup recommendations.

Board member Vermelle Greene provided an update on work of the State Board’s recently established Task Force on Achieving Academic Equity and Excellence for Black Boys, which she chairs.

State Board Decisions

The State Board issued decisions and orders in the following cases:

- Monarch Academy Public Charter School v. Baltimore City Board of School Commissioners, adopting the recommended decision of the ALJ to affirm the local board’s decision to not renew the charter.
- Olivia Aberdeen v. Howard County Board of Education, affirming the local board’s decision to non-renew the probationary teacher's contract.
- J.D. v. Montgomery County Board of Education, affirming the local board’s denial of a student school assignment request.
- Dan and Lauren T. v. Montgomery County Board of Education, affirming the local board’s denial of a student school assignment request.
- Dawn M. v. Calvert County Board of Education, affirming the local board decision.
- In Re: Baltimore City Public Schools Charter School Waiver Request, denying the school system’s request for a waiver from the statutory requirements for administering the charter school application and review process for the remainder of 2020.
Federal district court in California issues a preliminary injunction prohibiting the U.S. Dep’t of ED from enforcing its interim final rule allocating CARES Act COVID-19 relief funds to private schools


Abstract: The U.S. District Court for the Northern District of California has issued a preliminary injunction in favor of plaintiff states and local school districts (Michigan, California, Maine, New Mexico, Wisconsin, Pennsylvania, Maryland, Hawaii and the District of Columbia, as well as for public school districts in New York City, Chicago, San Francisco and Cleveland) prohibiting the U.S. Department of Education (ED) from implementing its Interim Final Rule, which directs states to allocate special funding Congress designated to help schools handle the Coronavirus pandemic to private schools based on the total enrollment of such schools. The court held that the plaintiffs have shown “a likelihood of success on the merits by demonstrating that the Rule is likely to be held an unlawful administrative action under the [Administrative Procedure Act] [APA].”

Facts/Issues: Plaintiffs, the States of Michigan, California, Hawaii, Maine, Maryland, New Mexico, Pennsylvania, and Wisconsin; the District of Columbia; and the New York City Department of Education, Chicago Public Schools, the Cleveland Municipal School District Board of Education, and the San Francisco Unified School District, assert six legal claims against the U.S. Department of Education (ED) and Secretary of Education Betsy DeVos (DeVos), for violation of the separation of powers principles; ultra vires action; violation of the Spending Clause, Article I, Section 8, Clause 1 of the United States Constitution; and three separate violations of the Administrative Procedure Act, 5 U.S.C. § 706 (2012). On July 20, 2020, plaintiffs moved for a preliminary injunction barring enforcement of the Rule. The Department opposed the request for injunctive relief. The Court heard oral argument on the motion on August 18, 2020.

ED stated that the Rule was intended to resolve “a critical ambiguity” in Section 18005(a), 85 Fed Reg. at 39479. In the Department’s view, the “context” of the CARES Act was the harm inflicted on “all of our Nation’s students” by the pandemic. (emphasis in original). A “mechanistic application” of the share formula in Section 1117 would award funds to private schools based only on their low-income students, and not all their students.

ED believes that the use of the formula in Section 1117 would be inconsistent with the concern for all students implicit in the CARES Act, it concluded that “the phrase ‘in the same manner as provided under section 1117’ does not simply mean ‘as provided under section 1117.’” ED also noted certain consultation and funding control terms overlapped in Section 18005(a) and Section 1117, which it saw as another indication that “in the same manner” meant something other than what those words would ordinarily denote.

ED invoked “our interpretive authority under Chevron U.S.A., Inc., v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984),” to implement a different share formula to govern the distribution of funds to private schools. The Rule presented LEAs with two options. Under the first option, LEAs could use the low-income student formula in Section 1117, but only if they limited CARES Act funding to public and private schools that were already participating in Title I funding. School districts could not use CARES Act funding for district-wide measures that would also benefit schools not participating in Title I funding. LEAs would
also have to comply with “supplement-not-supplant” requirements, meaning they could not use CARES Act funding to replace or exceed state and local funding allocations.

The second option would allow LEAs to avoid these limitations but only if they followed the method in the Department’s Guidance and shared funds with private schools based on the total number of students enrolled, and not on the total number of low-income students attending private schools.

**Ruling/Rationale:** The district court granted the plaintiffs’ motion for a preliminary injunction barring enforcement of ED’s Rule. The court began with an analysis of the APA claim addressing whether the plaintiffs had shown a likelihood of success on the merits by demonstrating that the Rule is likely to be held an unlawful administrative action under the APA.

In response to the plaintiffs’ contention that “the Rule is substantively unlawful under Sections 706(2)(A) and (C) because it is ‘not in accordance with’ Congress’s mandate to allocate GEER and ESSER funds to non-public schools ‘in the same manner’ as in Section 1117 of the ESEA, and so is necessarily ‘in excess of statutory jurisdiction, authority, or limitations,’” the district court said, “[t]he point is well taken.” It found that “Congress’s intent in Section 18005(a) is plain as day,” adding, “Congress expressly directed local educational entities such as plaintiffs ‘to provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools.’”

The court emphasized that “[t]he statute’s quintessentially plain language, and the ‘surgical precision’ with which Congress incorporated Section 1117 into Section 18005(a), leave no room for any other reading.” It rejected ED’s interpretation that “the phrase ‘in the same manner as provided under section 1117’ does not simply mean ‘as provided under section 1117.’” It commented, “This is ‘interpretive jiggery-pokery’ in the extreme.”

The district court also determined that ED’s rule was not entitled to deference under the *Chevron* doctrine. It stated:

The problem for the Department is that it cannot make it past step one, which asks whether the statute is ambiguous. When Congress has spoken clearly, as it did in Section 18005(a), “that is the end of the matter.” An executive agency like the Department has no authority to rewrite Congress’s plain and unambiguous commands under the guise of interpretation, and no deference is owed when an agency acts in contravention of a statute.

Regarding ED’s reliance on *King v. Burwell*, 576 U.S. 473, 510 (2015), the court found that allowing “agencies the freedom to disregard Congress’s words based on the gestalt of a statute” misplaced. It responded that “[n]othing in *King* supports such a radical revision of administrative law.”

The court pointed out: “The Department’s argument departs from *King* at virtually every turn. The Department did not present a detailed analysis of the overall structure of the CARES Act to support its conclusion about Congress’s intent.” It concluded: “The Department may prefer to give CARES Act funds to private schools more generously than Congress provided, but it is Congress who makes the law, and an agency has no power to ‘tailor’ legislation to bureaucratic policy goals by rewriting unambiguous statutory terms.”

The court further found that ED’s other arguments “in defense of the Rule are equally unavailing.” It noted ED’s “reliance on a general delegation of discretion to implement the
Education Code also is misplaced.” It noted ED “overlooks the fact that Section 18005(a) is a formula grant that does not allow for agency modifications.” It stressed: “Because Congress set the exact formula for the expenditures on nonpublic schools by incorporating Section 1117, the Department had no authority to impose its own conditions.”

As a result, the district court held that “the plaintiffs have established that they are likely to prevail on their claim that the Rule must be set aside under Sections 706(2)(A) and (C) of the APA.” It added, “They have also established that there was no ambiguity in Section 18005(a) for the Department to fill in, and so its sole duty was to ‘give effect to the unambiguously expressed intent of Congress.’” Consequently, the court said, “The Court need not take up plaintiffs’ other contentions with respect to whether the Department provided an adequate period of notice and comment before promulgating the Rule, or acted arbitrarily and capriciously in ignoring evidence about the Rule’s impacts. The Court also declines at this time to reach the constitutional argument plaintiffs assert under the Spending Clause.”

Finally, the court determined that the irreparable harm, balance of hardships and the public interest weighed in the plaintiffs’ favor.

NSBA Legal Clips (8/27/20)