



Pennsylvania School Boards Association

CORONAVIRUS

FACTS, QUESTIONS & ANSWERS

FREQUENTLY ASKED QUESTIONS REGARDING CLOSURE OF SCHOOLS DUE TO COVID-19 OUTBREAK

This FAQ updates the March 17, 2020 FAQ which addressed the most pressing of the numerous questions PSBA members are asking in relation to the temporary closure of schools due to the current outbreak of the COVID-19 coronavirus. We have still not yet seen the text of the necessary executive orders formally implementing the closure, so we continue to look to press statements and informal guidance documents to anticipate what those orders may eventually say. We have marked any additions as appropriate.

For this reason, it makes little sense to try to answer too many questions at this point, as the answers may change when more formal directives are issued and as the situation continues to develop. Rather than sow confusion with speculation and educated guessing, this FAQ continues to focus on things that are more or less knowable now and relate to decisions that need to be made sooner. It also helps to remember that answers to many questions are going to have to be figured out on the fly in this extremely unusual situation, unprecedented in modern times.

It is understandable that local school officials are eager to be proactive, but what we have heard so far provides at least a little bit of breathing room to learn more before deciding in the dark on courses of action that are not immediately urgent, or having to unnecessarily change direction.

What is the legal authority of the governor to order schools to be closed?

Pennsylvania's Emergency Management Services Code gives the governor extensive and sweeping powers in the event of a disaster emergency, which went into effect when Governor Wolf signed a "Proclamation of Disaster Emergency" on March 6, 2020. The Code provides, "Under this part, the Governor may issue, amend and rescind executive orders, proclamations and regulations which shall have the force and effect of law." The proclamation further delegates extensive emergency powers to the heads of specified commonwealth agencies, including the secretary of education. The proclamation authorizes the secretary of education: *"in his sole discretion, to suspend or waive any provision of law or regulation which the Pennsylvania Department of Education is authorized by law to administer or enforce, for such length of time as may be necessary to respond to this emergency."*

What does "closed" mean?

This has been a point of some confusion. Early announcements simply said schools would be closed or shut down for 10 days, without further explanation. Informal guidance issued by the Pennsylvania Department of Education (PDE) on March 15, 2020, clarifies that this means only that students will not come to school for in-person classes. Informal guidance by PDE on March 18, 2020, states that school districts are not required to provide instruction or implement continuity of education plans during the closure but have the option of providing educational services by other means, such as online instruction and/or materials sent home with students, and may implement continuity of education plan to the extent feasible. This is a matter of local decision.

What options are available if schools are considering continuity of education initiatives?

According to informal guidance from PDE on March 18, 2020, these options are: Flexible Instruction Days for districts with approved plans; online/digital learning opportunities; non-digital learning opportunities where materials are sent home with students. Regardless of which option is selected, particular attention must be paid to free appropriate public education (FAPE) for students with disabilities and English Language Development services for English Learners.

Closed for how long?

Early announcements expressed how long schools would be closed or shut down both as “two weeks” and “ten days,” the latter apparently referring to 10 school days. It is not possible to predict at this point whether that period of closure will be extended or what conditions would make an extension more or less likely.

What about the requirement to have at least 180 days of school?

According to press statements and the March 18, 2020 informal guidance from PDE, school districts will not be held to the 180-day requirement and will not be penalized financially for falling short of it due to the mandated closure. However, the March 18, 2020 PDE informal guidance strongly encourages schools to plan possible adjustments to their calendars so that as much instruction as possible can be provided. PDE is developing additional guidance whereby schools that fall short of the 180-day instructional hour requirements will be required to complete a simple form for purposes of reporting their total days and hours for the year.

Must school districts continue to provide transportation of students to non-public schools?

No. The March 18, 2020 informal guidance from PDE instructs that to further the commonwealth’s social distancing guidance, public schools will not provide any transportation services. The March 18, 2020 informal guidance also clarifies that nonpublic schools are closed.

Are school employees entitled to receive their normal pay while schools are closed?

Some school employees are, but others are not. Section 1153 of the School Code entitles “teachers” to their salaries when schools are closed due to contagious disease. Teachers include all professional employees and temporary professional employees, who devote 50% or more of their time to teaching or other direct educational activities, and in addition to classroom teachers can include counselors, librarians, school nurses, dental hygienists, home and school visitors, and other similar certificated professional employees and temporary professional employees. There is no similar provision of law guaranteeing continued pay for other kinds of school employees if they are not actually working. It would be necessary to review applicable collective bargaining agreements (CBA) to determine if some sort of entitlement existed within the provisions of a CBA.

May school districts choose to pay other workers while schools are closed?

Authority for this is uncertain. Other than the provision described above pertaining to teachers, school districts have no express statutory authority to pay compensation to workers who are neither working nor on some form of authorized paid leave. It might be considered a gift or gratuity, and school districts generally lack the authority to make gifts of public money. On the other hand, school employees are sometimes placed on paid administrative leave for various disciplinary and other proper reasons, and this has not been questioned despite the lack of express statutory authority for it. It is recommended that this not be done without receiving the advice of the solicitor and without the approval of the school board.

Can non-custodial staff be required to perform custodial/cleaning/sanitizing activities?

Unless limited by work rules in policy or collective bargaining agreements, an employer can reassign employees to meet the employer’s requirements. However, employees should not be assigned to custodial or maintenance duties they normally do not perform unless they have been provided with the appropriate training and personal protective equipment (PPE) associated with such assignments to assure compliance with workplace safety rules. This ensures not only a safe workplace but compliance with Pennsylvania’s General Safety Law, found in 34 Pa. Code Secs. 6.1 to 47.398 and regulations promulgated thereunder. These regulations apply to public sector employees.

Can employees be required to work during the time schools are closed?

Yes, subject to any limitations on the physical presence of school staff imposed by applicable orders of the governor or other officials with such authority. In addition to the educators needed to remotely deliver continued education services during the closure, schools should explore ways that other staff also can continue to perform useful work even though students are not present, whether on site or from home if that capacity exists.

Can employees who are at home be required to work from home?

Yes. However, the usefulness of working from home will depend on the nature of the employee's job and whether the technology and other tools needed to perform it are available at home.

If employees are allowed or required to work from home, are there overtime and other Fair Labor Standards Act (FLSA) issues to worry about?

Yes. To ensure compliance with the federal Fair Labor Standards Act (FLSA) and related state laws, it is important to keep in mind the distinctions between exempt and nonexempt employees. Generally, employees who are nonexempt from the minimum wage and overtime requirements are paid only for hours worked, and the FLSA requires that employers keep track of those hours and pay overtime wages for hours of work that exceed 40 hours in one week. If the employer is not confident that the hours worked at home by nonexempt employees can be accurately tracked, allowing or requiring hourly employees to work from home may be legally risky.

What does it mean when an employee who is a member of the PA National Guard is placed on "state active duty"?

Pennsylvania's Military Code entitles state and local government employees to 15 days paid leave for purpose of performing active or other duty as members of the Reserve Components of the United States Armed Forces, which includes the Reserve and the National Guard. State workers are entitled to an additional 15 days under certain circumstances when serving as members of the Reserve Components. Members of the National Guard are sometimes placed on "state active duty," a non-federal status, usually in connection with a disaster emergency of some kind. The Military Code entitles state and local government workers who are placed on "state active duty" to paid leave for the duration of their activation. The governor's March 6, 2020 emergency proclamation authorizes the appropriate officials to place members of the National Guard on state active duty as necessary to respond to the emergency.

May a district send employees home if they display influenza-like symptoms during a pandemic?

Yes. The Centers for Disease Control and Prevention advises employees who become ill with symptoms of influenza-like illness at work during a pandemic to leave the workplace. Typically, advising workers to go home is not a "disability-related" action if the illness is akin to seasonal influenza. Additionally, this would likely be permitted under the Americans with Disabilities (ADA) if the illness is serious enough to pose a "direct threat." Generally, districts may ask such employees if they are experiencing influenza-like symptoms with the understanding that the confidentiality of such information must be maintained. If the pandemic influenza becomes severe, even if these inquiries are deemed disability-related under the ADA, they may be justified by a reasonable belief, based on objective evidence, that the severe form of pandemic influenza poses a direct threat.

If an employee is exposed to infectious disease while working, is this covered under the Workers' Compensation Act?

Employees who believe they have contracted an infectious disease on the job, such as a pandemic influenza, may file a claim for workers' compensation. For the claim to be compensable under workers' compensation coverage, the illness must arise out of, or be obtained in the course and scope of, an employee's work. Further, the illness must be caused by conditions specific to the work performed. The burden to show that the illness is work-related falls on the employee. It is likely that most employees will have difficulty proving where they caught COVID-19 in light of the pandemic status of this virus. Employees would need to show that something that the district required the employees to do made them particularly susceptible to the virus.

May districts share health information with public health authorities that request health information about employees or students?

Public health authorities use protected health information (PHI) to identify, monitor and respond to disease, death and disability among populations. To achieve this goal, they recognize the importance of protecting individual privacy while maintaining the quality and integrity of health data. To accomplish the public health objectives and to meet certain other societal needs (i.e., administration of justice and law enforcement), the HIPAA Privacy Rule expressly permits PHI to be shared for specified public health purposes. Accordingly, districts may disclose PHI, without individual authorization, to a public health authority that is legally authorized to collect or receive such information for the purpose of preventing or controlling disease, injury or disability. Under FERPA, the federal law that protects the privacy of student education records, parents and eligible students must provide consent before a district discloses personally identifiable information (PII) from an educational record. However, there is an exception that allows such disclosures, without prior written consent, of PII from student education records to appropriate parties in connection with an emergency, if the knowledge of that information is necessary to protect the health or safety of a student or other individuals. Typically, public health officials are the types of appropriate parties to whom such disclosures under this exception may be made.

How will PSSAs and Keystone Exams be handled given the loss of instructional preparation time and the uncertain duration of school closure?

These measures of student assessment are more than just a state requirement, they are part of the state's obligation under the federal Every Student Succeeds Act to measure student achievement, so authority to exempt student participation ultimately lies at the federal level. PDE announced on March 19, 2020, the cancellation of all PSSA testing and Keystone exams for the 2019-20 school year as a result of COVID-19. This includes the Pennsylvania Alternate System of Assessment (PASA). PSSA testing was scheduled to begin April 20. Keystone testing was scheduled to begin May 11. The PASA testing window is open; however, all testing was halted on Monday, March 16, when all public schools closed. PDE is monitoring emerging federal guidance, working with other states to advocate for flexibility, and will pursue appropriate waivers to the fullest extent allowable as soon as the U.S. Department of Education (ED) guidance is clarified. The ED has already stated that it will consider a "targeted one-year waiver of the assessment requirements for those schools impacted by...extraordinary circumstances."

The [U.S. Department of Education issued guidance for K-12 educators](#) on the flexibility they could grant for student accountability.

How should special education and related services be provided for students with disabilities under IDEA or Section 504?

Please note: The following PSBA response reflects direction aligned with the U.S. Department of Education's guidance. The guidance issued by the PA Department of Education does not appear to directly align with federal guidance, and school entities should consult their solicitor when making IDEA, Section 504 and ADA decisions.

If a school entity is providing educational services and instruction through their emergency preparedness plan for continuity of student learning during school closure, they should ensure that all students are provided with appropriate access and accommodations in order to receive a free appropriate public education (FAPE) to the greatest extent possible based on the student's Individualized Education Program (IEP) or Section 504 Service Agreement—this may mean that additional technology or devices may be needed, or additional staff may need to be available for providing online instruction to meet the needs of specific students.

The [U.S. Department of Education Dear Colleague letter and attached resources](#) pertaining to ADA and Section 504 accommodations for technology contains helpful FAQs.

Whether a school entity is providing educational services or has decided to stop all instruction and educational services during a school closure, school entities will need to examine students' IEPs and Section 504 Service Agreements to determine whether and to what extent specific special education or related services identified in the IEP or Section 504 Service Agreement will need to be made up or compensatory services needed, consistent with requirements of state and federal law and regulations, to ensure that the student is receiving overall FAPE for the entire school year. This will include determinations on a case-by-case basis of whether special education or related services will be needed for a student to make up for any skills lost during the period of closure, and to provide progress on meeting goals of the IEP.

The [U.S. Department of Education has issued a Q&A document](#) on services under IDEA and Section 504, it addresses provision of services and change of placement.

Schools may need to consult with the school solicitor, PDE, PA Technical Training and Assistance Network (PaTTAN) and/or the local intermediate unit to discuss provision of special education and related services.

How can we hold IEP and Section 504 Service Agreement meetings needed to meet deadlines?

School entities may be able to hold IEP or Section 504 Service Agreement meetings through virtual means or conference calls during the period of closure. Schools should ensure that accommodations are made to ensure that communication and participation is provided in the native language or mode of communication needed by the parent/guardian. School entities should consult with their school solicitor, PDE, PaTTAN, and/or the local intermediate unit for additional guidance on postponing meetings when necessary or providing accommodations for participation. If a meeting is postponed, documentation should be created for communication to the parent/guardian and the reason for the delay, and filed with the appropriate IEP or Section 504 Service Agreement.

How will student attendance be documented?

If the school entity is providing educational services and instruction for continuity of student learning during school closure, mechanisms should be in place for determining and documenting a student's participation in online learning, such as log-in information to learning platforms, time-on-task measurement for learning platforms, visible roll call for web meeting connections, or other methods. For paper and pencil instruction, school entities may request parental sign-off on assignments or documented completion of assignments to measure student attendance based on the work assigned for that day.

If the school entity is not providing educational services or instruction during the school closure, please consult the PIMS manual or contact PDE for how to update information in the system or report information if necessary for emergency school closings granted by the School Services Office.

How can we comply with state audits and compliance monitoring?

Many elements of audits by the Bureau of School Audits under the Department of the Auditor General and monitoring by Division of Federal Programs, Division of Food and Nutrition and other state agencies are conducted by collecting information electronically prior to any on-site visits at schools. School entities can continue to collect data and documentation to provide to auditors and compliance monitors electronically, to the extent it is possible for staff to access that information virtually. Please communicate with auditors and compliance monitors regarding your school entity's situation; they will likely work with your school entity to reschedule on-site visits during the current closures.