



Frequently Asked Questions on Act 13 of 2020

(April 2, 2020)

When does Act 13 take effect? Act 13 of 2020 was signed into law on Friday, March 27 and became effective immediately. The provisions of the Act apply only to the 2019-20 school year and are as a result of the World Health Organization declaring a global pandemic on March 11, 2020. The Act and the requirements within it expire at the end of the fiscal year—on June 30, 2020.

180-Day Requirement

Are school districts required to add days at the end of the year? The 180-day requirement has been waived, and PDE's guidance clarifies that schools are not required to adjust calendars. However, schools will be required to report their total days and hours for the 2019-20 school year on a simplified form, and completed forms will be deemed approved.

<https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/Pages/AnswersToFAQs.aspx>

Charter School Tuition

Are school districts required to pay tuition for new charter school enrollment during the school closure? No. Act 13 of 2020 clarifies that during the period of school closures pursuant to the COVID-19 pandemic, school districts must continue to pay charter school tuition for those students that were enrolled in the charter school on March 13, 2020.

Can cyber charter and charter schools enroll new students during the school closure period and do school districts have to pay tuition for new charter enrollees during this time? Cyber charter schools are required to be closed during this time period, just like other school entities. Just like all other school entities, cyber charter schools should be prioritizing the provision of continuity of education to their students. During the period of the closures, Act 13 states that school districts are not responsible to pay tuition for new students a cyber charter school enrolls after March 13 and throughout the length of the closure. Following the period of school closure, school districts would be required to pay charter school tuition for the students enrolled in the cyber charter school as of that date.

Continuity of Education

Can a district attempt to deliver Planned Instruction for their Continuity of Education Plan and switch to Enrichment and Review if they are unable to execute the Planned Instruction?

Act 13 of 2020 requires school entities make a good faith effort to plan to offer continuity of education through alternative means during the period of closure. In providing continuity of education, PDE's guidance provides some options, including planned instruction and enrichment and review. Per PDE, these options can take a variety of forms, including online/digital learning opportunities; non-digital learning opportunities (e.g., materials sent home with students); and other approaches designed in partnership with local IUs and regional PATTAN centers. The decision to employ one or more of these methods is made at the local level based on feasibility, availability of resources, access and equity considerations, and in accordance with aggressive social distancing guidance.

<https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/Pages/AnswersToFAQs.aspx>

Act 13 requires school entities to develop and submit continuity of education plans. We are not aware of anything in the law or PDE guidance that prevents districts from making changes to their plans, and should a plan need to be changed, we urge school entities to communicate the change to parents and students with as much advanced notice as possible.

What email address or link should districts use to upload their Continuity of Education Plan to PDE? LEAs should submit continuity of education plans to PDE using the following email address: RA-EDContinuityofEd@pa.gov

Our district contracts with an independent contractor to provide transition classrooms in our buildings. Is the contractor required to provide the continuity of education plan for the transition classrooms? The district's Continuity of Education Plan may where appropriate include the contractor's services to the district.

Does the Continuity of Education Plan need to be approved by the local School Board? Act 13 does not explicitly require a school entity's Continuity of Education Plan to be approved by the school entity's governing body. However, it is recommended that the governing body review the plan prior to its submission to PDE and posting on the school entity's website.

Employee Concerns/Issues

Does the term "compensation" in Act 13 include salary and benefits? Act 13 of 2020 states that no employee should receive any more or any less "compensation" than the employee would otherwise been entitled to receive had the pandemic not occurred. It is our understanding that the term "compensation" is broad and includes both salary and benefits.

Does the new school code bill require districts to pay all employees during the closure or just teachers and principals? Act 13 of 2020 refers broadly to require payment to school employees employed as of March 13, 2020; it does not differentiate among types of employees, requiring payment to employees beyond teachers and principals. Compensation guarantee does not apply to such intermittent employees who do not have a “normal” amount of compensation or hours of work that can be determined, the treatment of these employees will be fact specific.

Are substitutes considered employees and are we required to pay them? Act 13 of 2020 refers broadly to require payment to school employees employed as of March 13, 2020; it does not differentiate among types of employees. The compensation guarantee does not apply to such intermittent employees who do not have a “normal” amount of compensation or hours of work that can be determined. Treatment of substitutes will be fact specific. We encourage school entities to check with their school solicitor about how to implement this provision based on the unique circumstances of each school entity.

Does Act 13 require that we pay coaches or other employees an additional amount pursuant to a supplemental contract or other agreement? Act 13 of 2020 refers broadly to require payment to school employees employed as of March 13, 2020; it does not differentiate among types of employees. We encourage school entities to review all contracts and to check with their school solicitor about options for implementing this provision based on the unique circumstances of each school entity.

Does Act 13 requires that we pay part-time employees or 10 month employees that are hourly? Act 13 of 2020 refers broadly to require payment to school employees employed as of March 13, 2020; it does not differentiate among types of employees. In many cases these employees would be paid, the determination to be considered is if they would have earned the compensation. We encourage school entities to check with their school solicitor about how to implement this provision based on the unique circumstances of each school entity.

Are employees who are regularly scheduled to work more than 40 hours be paid at overtime for those extra hours. Or would it be paid as straight time since they are not actually working? School entities should ensure that they are paying school employees that have worked overtime for the hours they have worked. Employees are not entitled to continuation of overtime hours unless that overtime was guaranteed. Regarding overtime hours not worked as a result of the school closures, school entities should make decisions in consultation with their school solicitor.

What if a school employee was expected to begin work on March 16? Are we required to pay that employee under Act 13? Act 13 of 2020 specifically requires payment to those school employees employed as of March 13, 2020; however, there is no prohibition of paying an employee that was expected to begin work on March 16. Additionally, school entities should consider whether the new employee will be working as part of the school entity's Continuity of

Education Plan during the closure. If so, the employee should be paid. School entities should review this scenario with their solicitor to determine if payment is required.

Are we required to pay employees who are on an uncompensated approved leave of absence? No. Act 13 does not affect leave of absence. Employees who are on leave that has been requested and approved do not have the right to change their status due to the current crisis. We encourage School entities to check with their school solicitor in situations such as this.

Our District had indicated to essential hourly staff for the first two weeks of closure that they would be given leave time credit for any hours they were required to report to work since all hourly employees are being paid. Is this permitted? We encourage school entities to check with their school solicitor.

Does Act 13 prohibit school districts from paying employees that will be needed to provide compensatory education and extended year services? If we need support from these employees after the closure would they be entitled to additional compensation? Act 13 is clear that school employees must be paid for the time of the school closure. Act 13 does not specifically address the implications for employees that may be needed for the provision of compensatory education or extended school year services, however, it does state that "no employee of a school entity who was employed as of March 13, 2020, shall receive more or less compensation than the employee would otherwise have been entitled to receive from the school entity had the pandemic of 2020 not occurred, had the minimum instructional day requirement not been waived...or had the Secretary not take action" under this Act. As the duration of school closure is not yet known, nor the implications for this group of employees, this is an issue that school entities should monitor over the next several weeks and discuss with their school solicitors.

Without PSSA, Keystone, and SPP data, how will teacher and principal evaluations be formulated for the 2019-2020 school year? Act 13 states that student performance data can be waived by the Secretary as a component of teacher and principal evaluations for 2019-20. As evaluations are not required until the fall, guidance on this issue may not be a high priority at this time, but we anticipate it will be forthcoming from PDE.

Many districts need to have staff return to their buildings to plan lessons and retrieve devices and materials to move forward with a Continuity of Education Plan. Is there any guidance on how to administer the social distancing guidelines when staff return to the buildings? School entities are encouraged to follow CDC and PA Department of Health recommendations regarding social distancing. School entities should institute a strict social distancing protocol if staff must return to the building to prepare lessons and materials pursuant to a Continuity of Education Plan. Ensuring that staff access to the building is staggered to minimize the number of people in the building at a given time and that employees always maintain six feet of separation while working in the building are recommended.

Finances/Payments

Will the State continue to provide normal payment schedule to Districts for their subsidies or should Districts be prepared to look for loans as necessary? Act 13 of 2020 requires the state to provide the same amount of subsidy payments, reimbursements and allocations school entities would have been entitled to receive had the pandemic not occurred. Act 13 does not apply to federal subsidy. At this point, we do not anticipate any disruption to the normal subsidy payment schedule.

How does the federal stimulus bill (CARES Act) interact with Act 13? The \$2 trillion federal stimulus bill, the CARES Act, designates about \$31 billion to states for education. Of that amount a portion is available for k-12, and will be disbursed to states shortly. One of the provisions of the CARES Act states that to be eligible to receive a portion of the funding under the Act, "a local educational agency, State, institution of higher education, or other entity that receives funds under "Education Stabilization Fund", shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus." This language is far broader than the language in Act 13. While additional guidance will be needed to determine the extent to which there is any flexibility in the CARES Act regarding, in particular, payment to contractors, we encourage you to reach out to your school solicitor as we await more information about how much of this federal funding Pennsylvania will receive, how it will be prioritized and allocated to school entities.

Protective Gear and Cleaning

What are the specific recommendations for appropriate cleaning materials and protective clothing and gear recommended by the CDC? The current understanding is that the CDC recommends that employees performing cleaning in a COVID-19 infected area or suspected COVID-19 infected area should be wearing gloves, a gown, and a mask during cleaning activities. These garments do not have to be surgical grade as used in hospitals, but they must provide protection (both from the cleaning materials and possible COVID-19 exposure in those areas where there has been an infection or one is suspected) to the employees performing the cleaning. In addition, LEAs should be aware that CDC recommendations are not the same when COVID-19 is not believed to be present in the geographic location. We are seeking further guidance and examples of the gear that could be used to meet this requirement and working to address concerns regarding difficulty in obtaining these materials.

Will districts receive any state or federal financial relief for expenses related to the school closures such as extra cleaning supplies, overtime for custodians, etc.? At this point, the state has not allocated any additional funding for increased district expenses due to the closure. The federal government recently passed a \$2 trillion stimulus bill, which directs nearly \$31 billion to education. Of that amount, a portion is dedicated to k-12 education. It remains to be seen how

much additional funding will be directed to Pennsylvania and if any will be allocated for this purpose.

Transportation Contractors

If districts are contracting with their transportation contractors to deliver lunches and instructional materials to students, do they need approval from PDE to do so? PDE approval is not required. This is a local matter that must be negotiated between the school district and the transportation contractor.

If districts have a contracted transportation service, are the contractor's employees considered school employees? No. The employees of contracted school transportation services are not school employees, and school entities are not required to pay them during the school closure. However, Act 13 of 2020 allows school entities to re-negotiate their transportation contracts, focusing on personnel and fixed costs, to continue paying the contractor during the closure. If a school entity does renegotiate its contract, the contractor must provide weekly proof that it has maintained its complement of employees in place as of March 13, 2020 and has not furloughed anyone. If a school entity renegotiates the contract and pays the contractor pursuant to the provisions in Act 13, the school entity will receive transportation subsidy payments in 20-21 at the normal rate (regardless of the fact that schools were closed for a period of time). To be eligible to receive the normal transportation reimbursements for next year, a school entity must continue to pay transportation contractors pursuant to existing or re-negotiated contracts.

When doing your state report, and if you pay your contractors as if the pandemic didn't happen, would you report the days that you paid your contractor during the closure even though the buses were not running? We expect further guidance from PDE on how to report data for the time period of school closures at a future date.

Does the transportation language cover for just buses or also include the van drivers who are contracted by the same contractors? We believe the language in Act 13 is intended to include all school transportation contractors.

Regarding paying our transportation contractor. It appears that when the ETRAN report is completed for the 2019-2020 school year we will use 180 days to calculate allowable costs. Is that correct? We expect further guidance from PDE on how to report data for the time period of school closures at a future date.

If we renegotiate our transportation contracts, that's still considered continuing to pay our contracts and will not have a negative impact on our subsidy, correct? Correct. Act 13 of 2020 allows school entities to re-negotiate their transportation contracts, focusing on personnel and fixed costs, to continue paying the contractor during the closure. If a school entity does

renegotiate its contract, the contractor must provide weekly proof that it has maintained its complement of employees in place as of March 13, 2020 and has not furloughed anyone. If a school entity renegotiates the contract and pays the contractor pursuant to the provisions in Act 13, the school entity will receive transportation subsidy payments in 20-21 at the normal rate (regardless of the fact that schools were closed for a period of time).

What documentation do we need to obtain from Bus Contractors that they are staying complement? Act 13 does not specify the form of documentation that must be provided from a transportation contractor with which a school entity has renegotiated a contract; however, the intent is to ensure that the contractor maintains the employees and is making payments on fixed cost items such as buses it had as of March 13, 2020. School entities that are considering renegotiating their contractors for the period of closure should work with their solicitor to determine what information to require from the contractor on a weekly basis.

If we would like to continue to pay our transportation contractors, are we required to renegotiate their contracts, or may we simply pay them at their current rates? Act 13 does not prohibit a school entity from paying a school transportation contractor at the current rate during the school closure.

If transportation contracts are renegotiated to ensure fixed costs are maintained, does this apply to daily pupil transportation to/from school only? What about costs for athletic & field trips? Act 13 does not specify what can or should be included if a school entity decides to renegotiate a transportation contract for the period of closure. The Act focuses on personnel and fixed costs and the intent is that the contractor maintains the employees it had in place as of March 13, 2020. This is up to each individual school entity that wishes to renegotiate a contract.

In order to maintain full transportation subsidy, is the school district required to renegotiate the contract? There is no requirement under Act 13 that a school entity renegotiate or pay a transportation contract during the period of school closure; however, if a school entity seeks to ensure that 2020-21 transportation subsidy is not impacted by the school closure, school entities should continue to pay the transportation contractors pursuant to the language in Act 13.

If we renegotiate transportation contracts and pay them less - will this reduce our subsidy next year? No. Act 13 states that a school entity that renegotiates and pays a transportation contract (and receives weekly reports from the contractor ensuring that none of the contractor's employees have been furloughed) will receive 2020-21 transportation subsidy that is not impacted by the school closures this year. There is no requirement that the amount a school entity pays a transportation contractor during the closure is the same amount they would have paid had the closures not occurred.

What if the transportation contractor already furloughed drivers? Act 13 requires that for a school entity to receive 2020-21 transportation subsidy that is not impacted by the school

closures this year, it would need to renegotiate and continue paying the transportation contract, and the contractor would need to provide weekly documentation that it had not furloughed any employees as of March 13, 2020.

What about school districts that operate their own transportation programs? School entities that operate their own transportation programs are required by Act 13 to pay school employees, which would include their bus drivers. As such, Act 13 states that these school entities will receive 2020-21 transportation subsidy that is not impacted by the school closures this year.