



COVID-19 and Public Education in New York
Some Frequently Asked Questions
April 8, 2020

On March 7, 2020, Governor Andrew Cuomo declared a State disaster emergency in response to the then impending threat posed by COVID-19. Not long thereafter the Governor ordered that all schools in the State of New York be closed, initially for a period of two weeks since extended a number of times and currently in effect through April 29, 2020.

Both the emergency declaration and the statewide closure of schools have had a direct impact in every school community throughout New York. Students and their parents and school boards and their staff have had to transition to a new realm in which teaching and learning is taking place remotely, away from the conventional familiarity of a physical school building environment.

The changes required to successfully manage that transition have been challenging, but throughout boards of education and their staff have been singular in their focus – to serve the students entrusted to them and provide opportunities that enable all students to continue their education through these unprecedented times.

Likewise, NYSSBA is singularly focused in its commitment to help boards of education navigate effectively the challenges before them. This document is just one of the many ways in which NYSSBA is sharing with its members information that is critical to that effort.

The questions answered in this document address some of the more recurring areas of inquiry received by NYSSBA. The answers are based on information gathered from various sources including, but not limited to:

- COVID-19 Executive Orders issued by the Governor accessible at www.governor.ny.gov
- Regulatory action taken by the NYS Board of Regents accessible at www.nysed.gov
- Materials issued by the NYS Education Department accessible through its COVID-19 webpage at www.nysed.gov
- Materials issued by the U.S. Department of Education accessible at www.ed.gov
- Conversations between NYSSBA and officials at the Governor’s office and the State Education Department

NYSSBA intends to update this Frequently Asked Questions document on a regular basis as another means of sharing continuously evolving information with its members.

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School Closures

Duration

Will New York State schools remain closed for the remainder of the 2019-2020 school year as a result of the COVID-19 virus?

A definitive answer to that question is presently unknown. Governor Cuomo first ordered all schools across the state to close pursuant to Executive Order 202.4 dated March 16, 2020. That closure was to last for a period of two weeks starting no later than March 18, 2020 and ending April 1, 2020. Since then, however, the statewide closure of schools has been extended, currently through April 29, 2020.

On each occasion, the Governor has indicated the State will reassess the need for an extension prior to the expiration of the closure period then in effect.

Waiver of 180 instructional day requirement

Will school districts lose state aid if they are unable to provide 180 days of instruction during the 2019-2020 school year as a result of the COVID-19 virus?

It depends. Pursuant to the Education Law and commissioner's regulations school districts must provide 180 days of instruction for state aid purposes. Except under certain specified circumstances, that aid is reduced by 1/180th for each day less than 180 days that the school is actually in session.

Pursuant to several COVID-19 related Executive Orders, schools will not be subject to a diminution in school aid due to a failure to meet the 180 instructional day requirement because of:

- A properly executed declaration of a local state of emergency, or
- Being directed to close by a state or local health official, or
- Following a properly executed declaration of a statewide emergency.

Unless one of these three conditions is met, nothing else in the language of the applicable COVID-19 Executive Orders definitively protects school districts from the loss of school aid.

Recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting permit schools to operate for less than 180 days for any day closed pursuant to an Executive Order that waives the 180 instructional day requirement.

Are there any limitations to the COVID-19 exemption from the 180 instructional day requirement?

Yes. Pursuant to several COVID-19 Executive Orders, the exemption is limited to the extent that the closed schools are unable to make up missed instructional days, even after exhausting any available time including snow days and vacation days. The use of such days helps to satisfy the 180 instructional days required for the apportionment of state aid.

In addition, schools that exceed the closure period directed by a Governor's Executive Order will not be exempted from the 180 instructional day requirement.

Would snow days or vacation days still have to be used if it results in an extension of the contractual calendar for teachers who would have to work more days than scheduled in the contract?

That is an open question and school districts are advised to consult with their school attorney.

Has there been an adjustment to the number of required instructional hours along with the 180 instructional day exemption?

Yes. Traditionally, the 180 days of instruction required for state aid purposes are calculated in terms of the number of instructional hours, which consist of an hour or a fraction of an hour, during which students are receiving instruction from a certified teacher in an academic subject and/or periods of time during which students are engaged in supervised study activities, including completing homework and/or the review of homework.

Pursuant to recent amendments to commissioner’s regulations adopted by the Board of Regents at their April 6, 2020 meeting, missed instructional hours for any day that a school is closed and the 180 instructional day requirement is waived by a COVID-19 Executive Order count towards the minimum annual instructional hour requirements.

Does the COVID-19 waiver of the 180 instructional day requirement apply to special act school districts?

Yes. Recent amendments to commissioner’s regulations adopted by the Board of Regents at their April 6, 2020 meeting provide that the same COVID-19 waiver rules from the 180 instructional day requirement available pursuant to COVID-19 Executive Orders apply also to:

- Special act school districts,
- State approved private schools,
- State-supported and state-operated schools, and
- Preschools

Does the COVID-19 waiver of the 180 instructional day requirement apply to the 180-day and 90-day requirements for prekindergarten programs?

Yes, pursuant to recent amendments to commissioner’s regulations adopted by the Board of Regents at their April 6, 2020 meeting.

2020 Spring Break

Can school districts close operations during the time period that would have been covered by the 2020 school spring break?

No. Pursuant to COVID-19 Executive Order 202.11, and as clarified in a State Education Department notice, even if a school district is scheduled to be on spring break during the current period of school closures presently extending through April 29, 2020, it must continue to provide remote instruction, meals for students, and child care for essential workers every weekday during that period of time.

Must school districts continue their operations on Passover, Holy Thursday and Good Friday, which occur during the current period of school closures now extended through April 29, 2020?

Yes. Pursuant to COVID-19 Executive Orders 202.11 and 202.14, school districts must continue to provide remote instruction for students, meals for students, and child care for essential workers every weekday of the current school closure period.

Can school district staff and students take time off to observe Passover, Holy Thursday and Good Friday?

It depends. According to email correspondence between NYSSBA and the Governor’s office, even though school districts must continue to provide instruction, meals and child care during those days, staff and students are free to observe their religious holidays. Staff members may seek permission to take the day off in accordance with their school district policies and applicable collective bargaining agreement provisions, subject to the school district’s obligation to remain open.

School districts are advised to consult with their school attorney regarding any issues that might arise regarding this matter before taking action regarding the same.

How should school districts address collective bargaining issues that might arise out of the loss of a spring break?

School districts are advised to discuss such issues with their school attorney.

Continuity of Learning

In general

What does continuity of learning mean?

According to both state and federal guidance, continuity of learning refers to the continuation of teaching and learning during prolonged school closures or student absences, remotely. It requires consideration of a variety of factors including, but not limited to, access and availability, type and quality of materials, and the length of time that the various types of learning will require. In addition, it is necessary to consider the needs of all students and strive to ensure that any plans for continuity of learning are equitable and available to all students.

Pursuant to State Education Department guidance, instructional and course design and plans for support must be aligned to the skill level of age groups and abilities, including students with disabilities and English Language Learners to the greatest extent possible. Furthermore, in contrast to high school students who are likely more capable independent learners, school districts educating students at the elementary and middle-school level might have to consider creating instructional materials for both students and parents.

How can a school district implement an at home virtual learning model when most of its students do not have access to computers or Wi-Fi and it is unable to provide the needed technology to all of its students?

Continuity of learning is not exclusively dependent on the use of digital technology and virtual learning. Indeed, according to both state and federal guidance, the use of a variety of methods to facilitate learning is important to allow for the possibility of restricted access to technology and limited communication by students. Some options, ranging from no technology to higher technology applications, include the use of:

- Printed materials
- Communication Tools
- Teacher/Student Interface
- Recorded instruction

- Online materials or other aligned content
- Online learning courses

Where can school districts and teachers learn more about continuity of learning tools and modalities that help to advance and maintain learning?

The State Education Department has a dedicated website that features remote continuity of learning resources. It is intended to provide school districts and teachers with increased options and examples of both technology and non-technology-based resources.

Among other resources, the website offers lists of digital content to enhance distance learning in a dozen subject areas including:

- Early learning
- English Language Arts (ELA)
- Math
- Physical Education
- Science
- Social Studies
- Special Education.

In addition, the State Education Department and New York’s nine public television stations have entered into an agreement that expands educational resources and makes available “Learn-at-Home” programming for all students via free, over-the-air broadcasts that do not require access to broadband or a laptop.

Content

Are school districts supposed to be teaching new content remotely?

Yes. According to State Education Department guidance, whether districts are using distance and online learning methods or other continuity of learning strategies, the priority for instruction should be that which best prepares students to meet the learning outcomes for the course and prepare for the culminating examination if applicable.

Units of study

What happens if students are unable to complete unit of study requirements as a result of COVID-19 school closures?

Pursuant to recent amendments to commissioner’s regulations adopted by the Board of Regents at their April 6, 2020 meeting, such students may be exempted from the unit of study requirements if the student otherwise achieves the learning outcomes for the portion of such unit of study completed.

The same exemption applies when students are unable to complete units of study leading to units of credit for a diploma. Likewise, career and technical education students may be exempted from unit of study and/or work-based learning experience requirements if they otherwise achieve the learning outcomes for the portion of such unit of study and/or work-based learning requirement(s) completed.

Student engagement

Where can school districts and teachers learn more about how to engage students being instructed remotely?

The State Education Department's website dedicated to continuity of learning includes tools to assist in communicating with students and families and creating engaging instructional opportunities for students.

Continuity of Learning – Students with Disabilities

What are the expectations regarding the provision of special education and related services to children with disabilities during COVID-19 school closures?

According to federal and state guidance, school districts must make provision to maintain education services to students with an individualized education program (IEP) or a Section 504 plan. Local decisions regarding remote learning must take into consideration all students, including students with disabilities.

In addition, care must be taken to ensure that school digital learning platforms are free of barriers that make accessing content and materials for some students with disabilities, including English Language Learners with disabilities. For students with an individualized education program (IEP) that includes the use of assistive technology in school and home, it would be appropriate to continue to utilize assistive technology as part of continuity of learning.

How can school districts provide remote special education and related services required to continue the provision of a free appropriate education (FAPE) to students with disabilities?

According to federal and state guidance, the determination of how FAPE is provided may need to be different than the manner in which special education and related services are typically provided. As appropriate, such services can be provided through distance instruction virtually, online or telephonically.

For students with an individualized education program (IEP) that includes the use of assistive technology in school and home, it would be appropriate to continue to use assistive technology as part of continuity of learning.

In addition, many disability-related modifications and services can be effectively provided online, including extension of times for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

How can school districts address remotely the needs of students with disabilities who do not benefit from distance learning as well as others?

According to federal and state guidance, where technology itself imposes a barrier to access or where educational materials are not available in an accessible format, school districts may still meet legal obligations by providing students with disabilities equally effective alternate access to the curriculum or services provided to other students. By way of illustration, if a teacher with a blind student in his/her class is working from home and cannot distribute a document that is accessible to that student, he/she can distribute to the rest of the class an inaccessible document and, if appropriate for the student, read

the document over the phone to the blind student or provide him/her an audio recording of a reading of the document aloud.

Can a school district deliver special education and related services remotely even if a student’s individualized education plan (IEP) does not provide for it?

Yes. According to federal and state guidance, although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Online or virtual learning constitutes an alternate mode of instructional delivery.

As such, school districts should consider telepractice as an alternative option for the delivery of related services, including bilingual related services.

Overall, school districts and parents are encouraged to collaborate creatively to continue to meet the needs of students with disabilities. They should consider the use of practices such as:

- Distance instruction
- Tele-therapy and Tele-intervention
- Digital platform meetings
- Secure online options for data tracking
- Documentation
- Low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

Are students with disabilities enrolled by their parents in a nonpublic school entitled to special education services during COVID-19 school closures?

Yes. According to the State Education Department, school districts of location must ensure that to the greatest extent possible each of those children are provided the services identified in their individualized education service plan (IESP) on an equitable basis, as compared to other students with disabilities enrolled in the public school with an individualized education plan (IEP).

What remedies will be available for students with disabilities who do not receive services for an extended period of time or who do not benefit as much as others from remote learning?

Pursuant to federal guidance, when schools reopen the school district’s committee on special education (CSE) or Section 504 committee, as applicable, must make an individualized determination whether and to what extent there may be a need for such students to receive compensatory services, including to make up for any skills they may have lost. This applies, as well, when there are delays in the making of decisions about how to provide services.

Is there guidance on the provision of services to preschool students with disabilities?

Yes. Pertinent questions and answers on this topic are found in the State Education Department’s memo to the field on the Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in New York, dated March 27, 2020.

Students with Disabilities – Compliance with IDEA Timelines

Questions have come up regarding what flexibility, if any, is available to school districts during COVID-19 school closures with respect to the timelines set by the Individuals with Disabilities Education Act (IDEA)

for the conduct of evaluations and reevaluations, annual reviews, resolution sessions and due process hearings. Below are some answers. Overall, however, both federal and state guidance encourage school districts work with parents to reach mutually agreeable extensions of time, as appropriate.

Evaluations and reevaluations

According to both federal and state guidance, evaluations and reevaluations that do not require face-to-face assessments or observations may take place, so long as the student's parent consents. However, evaluations that require a face-to-face assessment or observation would need to be delayed until school reopens.

The State Education Department recommends that school districts exceeding timelines for initial evaluations and reevaluations create a template document to assist staff in documenting decisions made, why timelines were exceeded, and documentation of parent participation and consent through temporary alternate methods such as email or notes.

Program and service arrangements

Traditionally, school boards must arrange for appropriate special programs and services for students with disabilities within 60 school days of the receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of a student with a disability.

Pursuant to recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting, those 60 school day periods will not include any day(s) that the school is closed pursuant to a COVID-19 Executive Order.

In a similar fashion, school boards traditionally have 30 school days from receipt of a recommendation from the committee on special education to place a student in an approved private school to arrange for such a placement. Pursuant to recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting, the 30 school day period will not include any day(s) that the school is closed pursuant to a COVID-19 Executive Order.

Committee on special education (CSE) annual review meetings

According to both federal and state guidance, committees on special education (CSE) are not required to meet in person while schools are closed. Meetings can be held, instead, through alternative means such as video conferences and conference calls upon mutual agreement by the school district and the student's parent.

Due process hearings

Pursuant to recently amended commissioner's regulations adopted at the Board of Regents April 6, 2020 meeting, during the COVID-19 crisis impartial hearing officers may:

- Conduct special education due process hearings by video conference, and
- Grant extensions beyond the customary 30 days for the length of time schools are closed but not more than 60 days.

English Language Learners

Unit of study requirements

Pursuant to recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020, English language learners may be exempted from unit of study requirements if they are unable to meet such requirements due to school closures directed by a COVID-19 Executive Order, provided they otherwise achieve the learning outcomes for such unit of study requirement.

English language proficiency assessment

Pursuant to recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting, there will be no annual English language proficiency assessment administered for the 2019-2020 school year.

Compliance with Part 154 timelines

Pursuant to recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting, any days a school is closed because of a COVID-19 school closure will not count toward the timelines applicable to:

- The English Language Learner identification process
- Parental notification and information
- English as a New Language/Bilingual Education placement

State Testing

Will the Grades 3-8 state assessments be administered during the 2019-2020 school year?

No. The New York State Board of Regents cancelled the administration of such assessments during the 2019-2020 school year. The suspension specifically applies to the following state testing programs:

- NYS Grades 3-8 English Language Arts Tests
- NYS Grades 3-8 Mathematics Tests
- NYS Grade 4 Elementary-Level Science Test
- NYS Grade 8 Intermediate-Level Science Test
- NYS English as a Second Language Achievement Test (NYSESLAT) in Grades K-12
- NYS Alternate Assessment (NYSAA) for students with severe cognitive disabilities in Grades 3-8 and high school

Will Regents exams be administered during the June 2020 examination period?

No. The New York State Board of Regents and the State Education Department cancelled the June 2020 administration of the NYS High School Regents Examination Program.

Diploma and Graduation Requirements

What measures will be used to award high school diplomas during the 2019-2020 school year?

In conjunction with the cancellation of the June 2020 administration of high school Regents examinations, the New York State Board of Regents and the State Education Department modified the requirements that students must meet to earn high school diplomas, credentials, and endorsements.

According to State Education Department guidance, the modifications apply to all students enrolled in grades 7-12 during the 2019-2020 school year who were intending to participate in one or more of the June 2020 Regents Examinations.

What are the modified requirements that students must meet to earn a high school diploma?

According to State Education Department guidance, students who would have taken one or more Regents examinations during the June 2020 examination period will be exempted from having to pass the assessment(s) in order to receive a diploma. To qualify for the exemption, students must meet one of the following eligibility criteria:

- The student is currently enrolled in a course of study culminating in a Regents examination and will have earned credit in such course of study by the end of the 2019-20 school year; or
- The student is in grade 7, is enrolled in a course of study culminating in a Regents examination and will have passed such course of study by the end of the 2019-20 school year; or
- The student is currently enrolled in a course of study culminating in a Regents examination and has failed to earn credit by the end of the school year. Such student returns for summer instruction to make up the failed course and earn the course credit and is subsequently granted diploma credit in August 2020; or
- The student was previously enrolled in the course of study leading to an applicable Regents examination, has achieved course credit, and has not yet passed the associated Regents examination but intended to take the test in June 2020 to achieve a passing score.

According to a State Education Department fact sheet, the exemption from examination satisfies the assessment requirements for any diploma type, including a local, Regents or Regents with advanced designation diploma.

More detailed information on how the Regents examination exemption applies in the context of graduation pathway assessments, career development and occupational studies (CDOS) credential, the use of safety nets, and diploma endorsements including honors, mastery and CTE technical endorsements, can be found in a State Education Department fact sheet on “Regents Examination and Graduation Requirements Questions Related to COVID-19 Closure.” That fact sheet issued April 7, 2020 is available at the Department’s COVID-19 website.

How can students participating in remote learning during COVID-19 school closures earn diploma credit?

According to State Education Department guidance, such students can earn the applicable course/diploma credit if they achieve the learning outcomes for the course. If extended school closures interfere with a school district’s ability to provide the full unit of study by the end of the school year, students should be granted the diploma credit as long as they meet the standards assessed in the provided coursework.

In addition, recent amendments to commissioner’s regulations adopted by the Board of Regents at their April 6, 2020 meeting provide that a student may be exempted from any requirement(s) for units of study leading to units of credit for a diploma if he or she is unable to meet such unit of study requirement due to school closures directed by a COVID-19 Executive Order, provided the student otherwise achieves the learning outcomes for the portion of such unit of study completed.

What should school districts that include Regents examination scores in the final course grade calculation do to determine whether a student has achieved the learning outcomes for the course?

According to a State Education Department fact sheet, school districts that include Regent examination scores in that calculation, even though the Department discourages such use, should review and amend their local grading policies as necessary.

Are students eligible for an exemption from a science Regents exam if they were unable to complete the hours of laboratory experience required for admission to such exam due to COVID-19?

Yes, according to a State Education Department fact sheet.

Must school districts keep a record of the exemptions from Regent examination graduation requirements?

Yes, according to State Education Department guidance. The Department will develop additional guidance on how to do so.

In addition, student transcripts should not reflect an examination score for any examination for which the student is exempted.

Emotional Support for Students

How can school districts help support students as they transition to the realities of remote learning?

As noted in State Education Department guidance, at this time it is even more critical to find ways to reach out to, and check in with, students and their families and support everyone’s social emotional learning (SEL) and mental health.

To that end, Department guidance recommends that school districts should consider offering explicit online SEL or mental health education lessons, or incorporate opportunities to practice SEL competencies within academic subject areas.

How can school leaders help support students with COVID-19 afflicted individuals at home?

The State Education Department has prepared a list of “Resources for Mental Health and Talking to Young People About COVID-19” that offer guidance for self-care, as well as strategies for talking with young people about COVID-19 honestly and effectively.

How can school districts provide support for student families?

State Education Department guidance recommends that school districts consider offering adults and student family members tools for coping with the stresses of isolation and anxiety in this time of social distancing. They also should clearly communicate to families how and where they can reach out with any concerns including by phone or email.

In addition, using virtual community circles, districts could offer all adults and students an opportunity to be heard, and to voice their experience and concerns.

Student Privacy

Are there any student privacy concerns that school districts need to be mindful of with respect to the use of online learning platforms?

As explained in State Education Department guidance, school districts must take measures to protect students' personally identifiable information from unauthorized access not only when providing information to officials but also when considering using digital (distance) learning platforms. Such measures must comply with applicable laws including the Federal Family Educational Rights and Privacy Act (FERPA) and New York's Education Law § 2-d.

What constitutes personally identifiable information?

Applicable federal regulations define personally identifiable information to include a student's name or identification number, as well as other information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.

In what ways do federal and state laws protect student personally identifiable information?

Generally, the federal Family Educational Rights and Privacy Act requires parental consent prior to the disclosure of student personally identifiable information. One exception applies in the case of a health or safety emergency. In such a case, the information may be shared with appropriate parties without the otherwise requisite consent, if knowledge of the student's personally identifiable information is necessary to protect the health or safety of the student or others.

New York's Education Law § 2-d permits the use or disclosure of a student's personally identifiable information for an administrative purpose authorized or required by law by a person acting exclusively in the capacity of an educational agency employee. However, the information disclosed must be limited to what is necessary to comply with the law's requirements. According to State Education Department guidance, school districts should ensure that requests for personally identifiable information be in writing, the identity of the person requesting the information is reasonably verified, maintain a record of the request, and that they retain the information disclosed.

What are some examples of measures that school districts using online learning platforms can take to protect student privacy?

According to State Education Department guidance, examples of such measures include:

- De-identifying data to prevent the public disclosure of student personally identifiable information, and
- Using encryption or an equivalent technical control that renders personally identifiable information unusable, unreadable or indecipherable to unauthorized persons when transmitted electronically.

To protect student privacy, it is recommended that school districts allow only the use of online learning platforms that have been previously approved by the district in accordance with applicable law and regulations.

School Performance Accountability

Will there be any adjustment to the performance levels expected from schools, school districts and students for federal accountability purposes under the Every Student Succeeds Act (ESSA)?

No. Instead, pursuant to a one-year waiver obtained from the federal government and recent amendments to commissioner's regulations adopted by the Board of Regents at their April 6, 2020 meeting, the:

- Commissioner will not conduct school and school district performance reviews using 2019-20 school year results
- Accountability status of public schools and school districts for 2020-21 school year will be the same as for the 2019-2020 school year
- 2018-2019 school year results will be used in instances where 2019-2020 results would have been used.

In addition, upon a finding of good cause, the commissioner may modify for the 2019-2020 through 2021-2022 school years any timelines pertaining to required notifications, plans, reports, or implementation of activities.

School Elections and Budget Votes

Will there be school board elections in 2020?

Pursuant to COVID-19 Executive Order 202.13, any school board, public library board, and village elections scheduled to take place in April or May 2020 have been postponed until at least June 1, 2020. Although it makes reference to elections only, the Governor's office has confirmed that the Order applies to school budget votes as well.

In addition, the Order indicates that such elections and budget votes are subject to further directives as to the timing, location or manner of voting.

What should school board candidates do regarding the collection of nominating petition signatures?

Pursuant to Executive Order 202.13, the circulation, filing, and collection of any designating petitions, or independent nominating petitions for any office that would otherwise be circulated or filed pursuant to the Election Law, Education Law or any other consolidated law for any office commencing March 31 have been postponed.

Prior to the Order, NYSSBA had issued a statement discouraging the in-person collection of nominating petition signatures as a health safety precaution to avoid exposure to COVID-19.

School Construction Projects

Pursuant to COVID-19 Executive Order 202.6, all employers were directed to reduce their in-person workforce. Any essential business or entity providing essential services or functions are not subject to this in-person restriction including, in part, construction. The Empire State Development Corporation was designated to make determinations as to whether businesses other than those specifically listed in the Order may be deemed essential. Questions arose regarding the application of the Order to school construction projects. Following are some basic answers.

Can school construction projects continue during school closures or must they be shut down?

According to the Governor’s office and Empire State Development Corporation (ESDC) implementation interpretations, schools may continue construction projects as government entities exempt from essential business restrictions. However, they should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols.

What is considered an essential construction project?

Essential projects are those that have a nexus to the health and safety of the building occupants or to the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.

Employment Issues

APPR and tenure decisions

Questions have come up regarding the incapacity to finalize the APPR evaluation process for the 2019-2020 school year due to an inability to complete all the required observations as a result of the COVID-19 school closures, and the lack of state test scores that affect other components of the APPR process. Additional questions concern how to make tenure determinations without the availability of final APPR ratings.

While answers to these questions remain pending at the time this FAQ document is being release, the State Education Department has been working on possible solutions. However, resolution of these issues involves modifications to statutory provisions which would need to be suspended by an Executive Order.

There has been some confusion regarding this matter because at their April 6, 2020 meeting, the Board of Regents adopted amendments to the APPR regulations. However, those amendments were adopted in response to legislative changes enacted by the 2019-2020 State Budget. Furthermore, in the item presented to the Board of Regents at the April 6 meeting, interim commissioner Shannon Tahoe expressly stated that:

Due to the closure of schools declared by the Governor pursuant to Executive Order(s) for the COVID-19 crisis, the Department recognizes that it will be difficult, if not impossible, for districts to implement their annual professional performance reviews in the 2019-2020 school year since State assessments have been suspended this year and many observations may not be able to be conducted before the end of the school year. As a result, the Department will be seeking an Executive Order from the Governor to waive the requirements of Education Law 3012-d.

NYSSBA will continue to monitor developments and provide you with answers as soon as they become available.

Continued payment to employees

Questions have come up regarding the obligation of school districts, while schools are closed, to continue to pay hourly employees, such as monitors and teacher aides, whose jobs can only be performed when students are in school and therefore do not have work they can perform at home. Many have been being paid without charge to leave accruals pursuant to COVID-19 Executive Order 202.4.

The answer to these questions could depend on interpretations of provisions within applicable collective bargaining agreements. In addition, pursuant to Section 18006 of the Coronavirus Aid Relief and Economic Security (CARES) Act school districts receiving funds under the Education Stabilization Fund shall “to the greatest extent practicable, continue to pay its employees...during the period of any disruptions or closures related to coronavirus.” The Act, however, fails to define the meaning of “to the greatest extent practicable.”

Therefore, school districts are advised to consult with their school attorneys on how to proceed.

School Contractors

Questions have come up regarding how COVID-19 school closures affect school district service contracts. For example, do districts have to continue to pay transportation contractors while schools are closed?

The answer could depend on interpretations of the language of the service contract itself. In addition, pursuant to Section 18006 of the Coronavirus Aid Relief and Economic Security (CARES) Act school districts receiving funds under the Education Stabilization Fund shall “to the greatest extent practicable, continue to pay its...contractors during the period of any disruptions or closures related to coronavirus.” The Act, however, fails to define the meaning of “to the greatest extent practicable.”

The answer also could depend on whether continuing to pay contractors while schools are closed is deemed to constitute a violation of the state’s prohibition against gifts of public funds.

Therefore, school districts are advised to consult with their school attorneys on how to proceed.