

# School District COVID-19 Update and Resources

Article

March 19, 2020

The current COVID-19 health emergency has confronted school districts with a wide variety of serious challenges. The purpose of this article is to compile useful information pertaining to several key recurring topics and serve as a reference tool. Italicized items are excerpts from the source documents linked below. Given the fast moving developments in this crisis, the shelf life of most guidance is short lived, but the links provided below should remain useful in accessing updated information that becomes available after the publication of this article.

## **School Closure**

1. On March 13, 2020, the Wisconsin Department of Health Services' Secretary-Designee Andrea Palm, under the direction of Governor Tony Evers, issued an order closing schools effective Wednesday, March 18, 2020, with an anticipated reopening on April 6, 2020.
2. On March 17, 2020, Governor Tony Evers directed Department of Health Services (DHS) Secretary-Designee Andrea Palm to issue an agency order prohibiting mass gatherings of 10 people or more to slow the spread of COVID-19, including closing schools for the duration of the public health emergency.

Reference: State of Wisconsin Office of the Governor Mass Gathering Restriction FAQs

## **Curriculum: Governor Evers' Frequently Asked Questions Relating to School Closure**

### **1. *Waivers***

*The Department of Public Instruction (DPI) will waive the hour requirement for any school district that requests the DPI to do so due to this ongoing public health emergency. As you and your community navigate the decisions ahead and look at what continuity of learning you can provide in this unprecedented situation, the department wants to ensure the agency is eliminating barriers in your ability to do this. You will still need to request this waiver per state law, but the DPI will expedite this process to make it as easy as possible for you. Accordingly, we are asking the governor to suspend a portion of the Administrative Code, so we may provide an expedited process and simple form for you to use to request a waiver and have it granted immediately. The department will provide you with this expedited process in*

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the upcoming days.

#### 1. **Testing**

*It is increasingly clear that it will not be possible to complete testing this year due to the pandemic. The DPI will aggressively pursue a waiver request to the United States Department of Education (USDE) from this requirement and will work with the legislature and governor's office around suspending the state test requirements this spring. In addition, we will continue discussions around the impact on report cards with all parties. We will keep you updated on this progress as we move forward.*

#### 1. **Virtual Learning**

*The DPI is continuing to update our website with new curated resources to help you if you plan to offer virtual learning opportunities. Those resources are available at the Wisconsin Department of Public Instruction District Planning and Implementation Resources for Continuity of Learning link and cross listed on the DPI's Information on COVID-19 page.*

Reference: State of Wisconsin Office of the Governor K-12 School Closure FAQs

#### **School Meals**

1. *The DPI submitted a Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) waiver to USDA. This request is to waive the congregate feeding requirement for SFSP and SSO meals during unanticipated school closures at school and non-school sites during a public health emergency, such as COVID-19. The waiver is for all SFSP and SSO sponsors in good standing in the state. The approved waiver is posted at the Wisconsin Department of Public Instruction Child Nutrition Program COVID-19 Information link, the DPI will be pursuing exemptions to any regulations that prevent you from providing meals for students. The department will keep you posted on waivers or exemptions granted.*

Reference: Wisconsin Department of Public Instruction COVID-19 Updates

#### **Special Education**

1. **General Guidance** If school districts are providing virtual instruction to its general education students, then the school district must provide virtual instruction to its special education students to avoid a violation of a Free Appropriate Public Education (FAPE).
  - a. Schools must work with their special education students to determine the best ways to provide virtual instruction to the students.
  - i. Homework packets;

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- ii. Consider homebound instruction options.
- iii. Specialized assistive technology.
- iii. Telephone calls with special education instructors to monitor student progress.
- b. Once students return to school, school districts should reconvene IEP meetings to assess for any possible regression, student progress, and consider reviewing and revising student goals if necessary.
- c. It is important to consider that students might be eligible for compensatory education services.
- 1. On March 16, 2020, Governor Evers provided the following as guidance for special education.
  - a. What supports are available for students with an IEP?
    - i. According to Governor Evers' FAQ, *the federal Department of Education (ED) issued new resources around protecting student privacy and addressing questions regarding serving students with disabilities during the COVID-19 outbreak. If a school is closed for an extended period of time (generally, more than 10 consecutive school days) and educational services are not provided to other students, then services are not required for students with disabilities during the closure. If a school provides services through virtual learning, the school should make all reasonable efforts to provide students with disabilities equal access to the same opportunities, and, to the greatest extent possible, special education and related services are provided. Once school resumes, local educational agencies must make every effort to implement individualized education plans, and should consider, on an individualized basis, whether and to what extent compensatory services are required due to the closure.*

Reference: State of Wisconsin Office of the Governor K-12 School Closure FAQs

- 1. Please also see the U.S. Department of Education FAQ relating to special education students.

Reference: U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak

### **General Employment Considerations**

While the school shut down itself is uniform statewide, each district will need to determine its handling of a number of employment and compensation issues for district employees. Keeping in mind that the closure order only relates to onsite student instruction and all extracurriculars, districts are free to require employees to work during the closure. For example, districts providing online

instruction will still have teachers working in connection with preparation and delivery of such coursework. As salaried professionals, the administrators and teachers will usually continue to be paid consistent with their individual contracts.

Things are a bit more complicated with hourly support staff because depending on the particular job functions, some may be working during the closure and some may not. Some districts have decided to only pay those employees who will be working and essentially place those who will not be working on a temporary layoff status. (Districts should review their support staff policies and handbooks to determine if there are notice periods required for layoffs and/or emergency closure provisions that could apply to this shutdown.) Other districts have decided to continue compensation of all support staff on a uniform basis, whether or not they are working. Still other districts have elected to pay all support staff on a uniform basis and, in addition, provide overtime or premium pay to those who are required to work.

Each district board and administration will need to determine its comfort level with, and affordability of, the various options. Given that the closure will now extend indefinitely past the original designated date of April 6, districts electing to continue pay for non-working employees may want to avoid promising that indefinitely, but should indicate it will be re-evaluated at certain checkpoints along the way.

Individual employee scenarios will need to be evaluated as to the ability to access sick leave, unemployment compensation, or family medical leave depending on whether or not the employee would otherwise be required to work and other factors. (See additional information below on FMLA and Unemployment Compensation.)

### **Unemployment Compensation**

1. The Wisconsin Department of Workforce Development (DWD) has issued guidance regarding unemployment compensation during the COVID-19 outbreak.

Reference: Department of Workforce Development Unemployment COVID-19 Public Information

*a. Will workers qualify for unemployment benefits if the coronavirus (COVID-19) causes an employer to shut down operations?*

*i. Wisconsin unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer must shut down operations and no work is available, individuals may be eligible for unemployment benefits if they meet the monetary criteria and the weekly eligibility criteria.*

1. The DWD may review whether the employer is requiring the employee to stay at home versus the employee choosing to stay at home.

#### **Family Medical Leave Act (FMLA)**

1. The Federal FMLA regulation specifically address employee FMLA leave considerations during extended periods of leave in 29 C.F.R. § 825.200(h):
  - a. *For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. **Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.** Methods for determining an employee's 12-week leave entitlement are also described in § 825.205.*

#### **Open Meetings Law and Virtual Meetings**

1. On March 16, 2020, the Wisconsin Attorney General issued an opinion regarding the coronavirus and implications regarding open meetings. Open meetings include school board meetings.

Reference: Wisconsin Department of Justice Office of Open Government  
Advisory: Coronavirus Disease 2019 (COVID-19) and Open Meetings

1. Wisconsin open meetings law states: "[I]t is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1). The guidance acknowledges that board members have been able to participate in meetings by teleconferencing and, more recently, video conferencing provided the public has access to the meeting.
2. This opinion provides additional guidance relating to "virtual meetings" where there may not be a central meeting location.
  - a. *When an open meeting is held by teleconference or video conference, the public must have a means of monitoring the meeting. **DOJ concludes that, under the present circumstances, a governmental body will typically be able to meet this obligation by providing the public with information (in accordance with notice requirements) for joining the meeting remotely, even if there is no central location at which the public can convene for the meeting.** A governmental body conducting a meeting remotely should be mindful of the possibility that it may be*

*particularly burdensome or even infeasible for one or more individuals who would like to observe a meeting to do so remotely—for example, for people without telephone or internet access or who are deaf or hard of hearing—and appropriate accommodations should be made to facilitate reasonable access to the meeting for such individuals.*

b. Public entities must keep in mind the general public needs to have reasonable access to the meeting, and the particular content of the meeting might not be suitable for remote access.

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