

Legislature Enacts Emergency Provisions to Public School Code in Response to Pandemic

Articles, COVID 19: Answers to Business Challenges March 27, 2020

The Pennsylvania Legislature enacted, and Governor Wolf signed Senate Bill 751 (now officially Act 12 of 2020), to address the Pandemic of 2020 brought on by COVID-19. These emergency provisions apply only to the current 2019-2020 school year and impacts school entities including school districts, intermediate units, career and technical education schools, charter schools and certain other schools/programs. The Emergency Provisions do the following:

- **Waives the 180 Instructional Day Mandate** – Of greatest impact, the legislation amends the School Code’s requirement that school entities be open for at least 180 instructional days. This again applies only to the 2019-2020 school year.
- **Gives the Secretary of Education powers such as to:**
 - a. Order the closure of all school entities until the threat of the COVID-19 Pandemic has ended.
 - b. Increase the number of Flexible Instructional Days (FIDs) and waive applicable FIDs deadlines.
 - c. Waive the following requirements:
 - i. The Minimum Hours Requirement for Career and Technical Education;
 - ii. The Pre-Kindergarten Minimum Instruction Days Requirement;
 - iii. The Twelve-week Student Teachers Preparation Program Requirement; and
 - iv. Approved Industry-Based Competency Assessments – Requirements relating to the NIMS Assessment and the NOCTI Exam (National Occupational Competency Testing Institute Exam)
- **Preserves Employee Compensation and Retirement Under PSERS** – An employee of a school entity employed as of March 13, 2020 may not 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 or had the Secretary of Education not taken action under this section. Similarly, such employees’ PSERS retirement credit and contributions shall be no more or less because of the Pandemic. Note that if employees were already furloughed, the school entity would need to bring those employees back and keep paying them. If the employee already applied for unemployment, it would be considered a no-fault overpayment and unemployment benefits would stop. In addition, school entity employees will experience no loss of retirement benefits due to the Pandemic of 2020 or due to action taken by the Secretary.
- **Mandates Certain Safety Measures** – Custodians/Cleaning Staff shall be provided with appropriate cleaning materials and protective gear as recommended by the Centers for Disease Control.
- **Preserves Special Education Rights** – Schools shall provide written notice to the parents of special education students under an IEP of a school entity’s plan for ensuring a free and appropriate public education (FAPE).
- **Requires Districts to Develop a Continuity of Education Plan** – Schools shall make a good faith effort to develop a plan to offer a continuity of education to students using alternative means. Schools shall submit the Plan to the Department of Education and post the Plan on its website. The Department shall provide guidance and Intermediate Units may provide technical assistance to Schools in creating these Plans.
- **Preserves Subsidies/Reimbursements/Payments** – No school entity will see any loss in school subsidies or reimbursements from the Commonwealth as a result of actions taken by the Secretary pursuant to this legislation. In addition, charter schools will not receive more or less per-student tuition payments than they otherwise would have been entitled to had the Pandemic -related school closures not occurred. Tuition payments will be based on the students enrolled as of the initial date of the closure, March 13, 2020. Legislative notes provide that school entities will be required to keep paying intermediate units and career and technical centers, as well as approved private schools and private residential rehabilitative institutions where public schools have placed students.
- **Requires the Secretary to Seek Federal Testing Waivers** – The Secretary of Education must apply to the United

States Department of Education for testing waivers to permit cancellation of assessments for the 2019-20 school year.

- **Authorizes Districts to Seek Waivers of Most Mandates** – A school entity may apply to the Secretary for a waiver of any provision of the School Code (excluding Sections 528 (Third-party services), 1124 (causes for suspension) and 1125.1 (persons to be suspended), regulation of the State Board of Education or standards of the Department if the waiver directly related to the school entity's staffing needs or impacts the school entity's instructional program or operations as a result of the Pandemic of 2020. The Secretary will have 30 days to approve or disapprove the request and the Secretary's determination shall not be appealable.
- **Extends Professional Development Compliance Period** – Each active professional educator's current continuing professional education compliance period is extended by one year.
- **Private/Nonpublic Schools** – The governing body of a nonpublic school may close the nonpublic school due to the threat to health and safety caused by the Pandemic of 2020 and minimum instructional requirements shall not apply. A private or nonpublic school which was closed because of the 2020 Pandemic may not receive more or less payment from school entities for any student placed by a school entity and enrolled as of March 13, 2020, as long as the private or nonpublic school is offering continuity of education during the period of closure.
- **Home Education** – The minimum instructional time requirements for home schooled students shall not apply, nor do the requirements to administer a nationally normed standardized achievement test or statewide test or conduct required annual evaluations.
- **Transportation** – Each school entity may renegotiate a contract for school bus transportation services to ensure contracted personnel and fixed costs, including administration and equipment, are maintained during the period of school closure, and will be eligible to receive reimbursement from the state as if the Pandemic of 2020 had not occurred.

For additional information contact John Vogel or any member of the Municipal & School Group.