

Navigating the Return to School After COVID – 19

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A Recap . . .

Executive Orders 103, 104, 107, 119 and 122

- 103 – Declared a public health emergency due to COVID-19.
- 104 – All schools closed until further notice.
- 107 – “Stay at home” order. All schools and nonessential businesses closed.
- 119 – Public health emergency (103) extended indefinitely.
- 122 – Nonessential construction halted. Exceptions for school construction and other limited projects.

New laws stemming from the COVID-19 crisis . . .



New laws stemming from the COVID-19 crisis . . .

- A3840/S2281 (P.L. 2020 c.6) - Requires school districts that are directed to close due to the COVID-19 pandemic to provide school meals or meal vouchers to all students enrolled in the district who are eligible for the free and reduced price school lunch and school breakfast programs.
- A3848/S2301 (P.L. 2020 c.9) – Prohibits employers from terminating, refusing to reinstate or otherwise punish employees who request or who take time off from work during the current COVID-19 pandemic if the employee has, or is likely to have, an infectious disease that may infect others at the workplace.

New Laws (cont.)

- A3849/S2302 (P.L. 2020, c.10) – Amends time required to respond to Open Public Records Act (OPRA) requests during periods of emergency (Normal time periods for response do not apply but a reasonable effort to do so must be made within 7 business days).
- A3850/S2294 (P.L. 2020, c11) - Permits public bodies to conduct meetings electronically during periods of emergency. The bill also allows public bodies to provide notice of the meetings electronically during that time, with certain limitations.

A3904 (P.L. 2020 c.27)

- Allows virtual learning to meet 180-day school year requirement if school is closed for a period of three or more days due to a declared health emergency, state of emergency, or other appropriate State directive.
- Also requires school districts to pay, during virtual instruction periods, benefits, compensation, and emoluments to any employee that the employee otherwise would be entitled had they been working while school facilities remained open. This includes employees covered by a collective negotiations agreement as well as nonaffiliated employees

A3904 cont.

- A school district must continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider in effect on the date of the closure as if the services for such benefits, compensation, and emoluments had been provided, and as if the school facilities had remained open. These payments must be used by the contractor for payroll and fixed cost obligations only. The district must attempt to renegotiate the contract(s) to remove indirect costs such as fuel, tolls, and maintenance costs.
- Similar requirement for contracts with an educational services commission, county special services school district, and a jointure commission, and under any shared services agreement and cooperative contract entered into with any other public entity.

Families First Coronavirus Response Act (FFCRA)

- Federal law signed by President Trump on March 18, 2020.
- 2 Distinct Leave Provisions –
 - Emergency Paid Sick Leave Act
 - Emergency FMLA Expansion Act
 - Both laws expire December 31, 2020

Emergency Paid Sick Leave Act

- Requires employers to provide up to eighty (80) hours of paid sick leave for full-time employees when the employee is unable to work or telework because of COVID-19. Part-time employees are provided with pro-rata paid leave if used for the same reasons.
- When used for the employee's own health condition related to COVID-19, the employee must be paid his/her regular rate of pay, to a maximum of \$511 per day.
- When used to care for an ill family member or for a son or daughter whose school or childcare provider is closed, the employee must be paid two-thirds of his/her regular rate of pay, to a maximum of \$200 per day.

Emergency FMLA Expansion Act

The Act creates a new category of paid leave under the FMLA, entitled “public health emergency leave related to COVID-19.”

Employee must be employed for 30 days prior to leave. (no hours requirement, unlike other FMLA leave)

Emergency FMLA Expansion Act

- 12 weeks of leave provided only if employee is “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”
- First two weeks are unpaid (but employee can use emergency sick leave). Thereafter, a maximum of ten weeks leave shall be paid at “not less than two-thirds of an employee’s regular rate of pay,” up to a maximum of \$200.00 per day and \$10,000 in the aggregate for the entire leave period.”

Pending NJ Laws

- **A3902** – Permits municipalities to delay payment of taxes into a school district's account. Passed unanimously by Assembly.
- **S2273** – Modifies School Employee Health Benefits Plan, as well as plans for districts in private plans or joint insurance funds. Eliminates most SEHBP plans, creates new in-network plan, and requires all districts to offer new plan to current employees as option, and to all new employees until 2027. Passed unanimously by Senate.
- **To Be Introduced** – Senate bill to allow creation of public worker job sharing furlough program.

Compensatory Education

- Equitable Award
- A school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem. M.C. and G.C. o/b/o J.C. v. Central Reg'l Sch. Dist., 81 F.3d 389 (1996).
- "A procedural violation alone cannot support a compensatory education award." P.P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009).

Compensatory Education

What it's not...

- Not 1 for 1 direct correlation.
- Not necessarily a formulaic response.
- Teams need to consider whether the school closure denied a student the opportunity to progress or caused the student to regress.

Determination of Compensatory Services

An Individualized Approach

What was the progress expected vs. progress attained?

- Period of deprivation
- Extent (what targeted programming/services/modalities are needed to return the student to the expected level of functioning.)
- Prior rate of progress
- Specific deficits compared to specific services
- Will any services assist in moving the student forward?

Forms of Compensatory Education

- Additional related services for a period of time.
- Increase in instructional hours.
- Tutoring.
- Direct 1:1 services vs. group.
- Added adult support in class.
- Compensation for parents to obtain services.
- Summer programming.
- Reimbursement for private services.
- Teacher training.
- Assistive technology.

Practical Considerations for Returning

End of year plans June 2020

Budget Cuts

Closure of a classroom vs. school vs. district

Social distancing while in school (NJSBA survey)

Health Checks

 Thermometers/Masks

Employee Sick Time/Accommodations/Fears

HIBs/Emotional Health

Communication

Athletics

Evaluations

Remote Learning Plans

Student Assessments

Policy Updates

Before and after school childcare

Cleaning: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Governor's Plan to Reopen Economy

1. 14 day decline in new CV cases and hospitalization.
2. Expanded testing.
3. Robust ability to trace contacts.
4. Availability of quarantine locations.

Note this does not involve schools; separate task force will make those recommendations.

Reducing the (unavoidable) risk

1. Temperature checks
2. PPE
3. Social distancing: limiting class size (possibly 10)
 - 1) Staggered times or days
Possible differential time for at-risk pupils (e.g., 70/30 vs. 50/50)
 - 2) Continue remote instruction on alternate days or all days
 - 3) Impact on transportation contracts
4. Testing and contact tracing.

Reducing the (unavoidable) risk

5. Students remain in classrooms (no cafeteria, gym, assemblies)
6. Recess eliminated or limited (note statutory requirement would need to be waived).
7. No parents/visitors in building (virtual teacher/parent conferences).
8. Regular disinfection and deep cleaning.

Reducing the (unavoidable) risk

9. Possibly increasing ventilation and airflow.
10. Protocol for dealing with possible infection and return.
11. Promoting handwashing/sanitizer/hygiene practices.
12. Student counseling/mental health/mindfulness.

Negotiations implications

1. Impact of calendar changes.
2. Workload or work hours.
3. Safety/health.
4. Training.

Review your collective negotiations agreements with an eye toward areas that may present issues or impediments to flexibility.

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