



## **MSBA Guidance: Schools Are Closed – Now What?**

### **Who can close schools?**

Schools can be closed by:

1. The local school district (171.031, RSMo.);
2. The Governor when a state of emergency is declared and the action is necessary to address the crisis (44.100, RSMo.);
3. The Department of Health and Senior services or the local health authority. (192.020, 19 CSR 20-20.050)

### **Does the Board or the Superintendent make the decision to close schools?**

Please note that neither the Governor nor the state or local health department need consent by the district, superintendent, or school board to shut down a school. If those entities issue an order to close, the district must close. But assuming that has not happened, does the superintendent or the school board make the decision?

This issue is not explicitly addressed in law. State statute does require the school board to adopt a school calendar. §171.031, RSMo. School districts routinely rely on superintendents and their staff to make judgments when calling school due to inclement weather, but those situations are typically anticipated, and some districts even build in time in the academic calendar in anticipation of snow days.

Should the superintendent also have the leeway to call school for other reasons such as a health emergency? That might be a matter of Board policy and Board expectations. MSBA's standard policies are silent as to the authority to call off school but do make it clear that the Board will ultimately determine how these days are made up, in accordance with law and the superintendent's recommendations.

### **Does the Board or the Superintendent make the decision to open schools after they have been closed for health reasons?**

The school district cannot open schools if they are still under a legal order by the Governor or the health department. But assuming those orders have been lifted, the district will need to decide when the schools will reopen and adjust the district's calendar. Because the Board is required by law to adopt the calendar and because there will likely not be urgency in this decision, MSBA assumes that the Board must give final approval to have the schools reopened and to make any adjustment to the school calendar.

### **Will the Governor keep schools closed through the end of the school year?**

It is a possibility, but that decision has not been made yet. MSBA recommends that districts make contingency plans now for a variety of scenarios. Even if the Governor allows for schools to resume, what factors will the Board consider before deciding to reopen schools in your district? What preparations need to occur before that happens? How will you communicate to parents and students? Districts should take the time now to think through and prepare for this in case it happens. Right now, schools are closed by the Governor's order until April 6<sup>th</sup>. What will your district do if the order is lifted?

### **Will school closures impact the amount of state funding our district will receive?**

We hope not. DESE has already stated that the absences this year will not be counted against the district's average daily attendance (ADA), which is used to determine funding. State statute addresses a situation where attendance is substantially reduced during a pandemic. Section 163.021(4) states that in this situation state aid will be based on the previous school year's numbers – the 2018-19 school year.

Of greater concern right now is the state revenue. When people are out of work, income tax revenue is down. It is unclear how the current.

### **Will school closures impact our district's accreditation?**

No. Districts are not required to administer state tests such as the MAP or end-of-course examinations this year, so DESE will not have the academic information they need to change a district's accreditation status for at least one year. That is a relief for some districts. But for districts that were hoping to improve their status, it means a delay of another year.

### **If school is closed, are we required to pay our staff?**

The district may not have a choice. The Coronavirus Aid Relief and Economic Security (CARES) Act that the U.S. Congress passed on March 27<sup>th</sup> provides supplemental aid to states and school districts. The aid will be distributed through the Title I program. If your district receives that aid (most will), the law requires recipients to continue to pay employees and contractors during school closures due to COVID-19, "to the extent practicable."

But if the CARES Act does not apply to your district, the answer depends on several factors:

1. Is the staff member under an employment contract? If so, that employee is owed a certain amount of compensation for working this school year. The district will likely be held responsible for paying the compensation even though school has been cancelled.
2. Is the staff member still working? Many staff members are considered essential workers that are still reporting to duty. Those employees obviously must be paid.
3. Is the staff member required to work remotely? Many teachers, for example, are still teaching classes and performing other duties for the district. If the employee is still working the district will have a difficult time refusing to compensate the employee.
4. Is the employee on a paid leave? Some employees are still required to report to work but cannot because they have been quarantined, their doctor has advised them to self-quarantine, or they are taking care of a child because school or daycares are closed. These employees may be compensated using district-provided paid leave. In addition, the federal government has now created two specific paid leave provisions for COVID-19 absences. To learn more, see MSBA's guidance, "New Federal COVID-19 Leaves Apply to All School Districts!"
5. Is the employee covered under a collective bargaining agreement that obligates the district to pay the employee in these circumstances?
6. Is the employee simply not required to work and does not fall into one of the options above? If so, the district is not legally required to pay these employees during the time that these employees are not working and are not expected to work. The law does not prohibit the district from paying these employees, but they are not required to be paid.

Many districts are struggling with the decision to continue paying employees – particularly with uncertainty as to finances or the possibility that the school calendar might need to be extended into the summer. If the district decides to pay employees, consider the following:

- a. Notify employees that the decision is temporary and may change depending on uncertain district finances.
- b. Notify employees that if the district is paying them that they can be required to report to the district immediately if a need for their services arises.
- c. Consider using the employees for district needs while schools are waiting to reopen. Districts will need to clean schools thoroughly and every district has delayed maintenance, library books to sort, equipment to be inventoried, documents to be scanned and other tasks that could be done during this break.

## **Are employees with underlying medical issues permitted to use FMLA leave for the purpose of avoiding COVID-19?**

FMLA leave only applies if the employee has a serious health condition. It is not available as a prevention measure. Although Congress has expanded FMLA to include absences if an employee must stay home with a child because schools and daycares are closed due to the COVID-19 outbreak, FMLA still would not cover absences where an employee is told by a doctor to stay home to avoid infection. However, the new federally mandated emergency paid sick leave for COVID-19 absences (EPSL) would apply. See MSBA's guidance, "New Federal COVID-19 Leaves Apply to All School Districts!"

## **Is COVID-19 a serious health condition as defined by FMLA?**

Traditionally, the flu and similar illnesses do not constitute a serious health condition. However, in some cases a virus such as COVID-19 could cause complications that would result in a serious health condition, and FMLA leave would be applicable. Given the serious nature of this virus, MSBA recommends that districts assume it is a serious health condition for FMLA purposes.

## **How do we keep students safe now that staff are frequently communicating with students electronically and the professional boundaries of the regular classroom are not possible?**

Unfortunately, there are adults that misuse their authority to interact with and sexually molest students. Research has shown that these offenders frequently use electronic communication and social media, which is why state statute requires all school districts to have a policy that addresses electronic communications between staff and students. See 162.069, RSMo. and MSBA Policy GBH.

But now that schools are closed, districts are encouraging virtual education. Teachers are calling and texting and e-mailing and connecting with students using videoconference programs. What should school districts do?

1. ***Employees who are not using district-provided technology or tools need to notify their supervisors and obtain permission.*** Principals need to know what the technology needs are and make sure that the tools being used are as safe as possible. For example, there are versions of popular software that provide confidentiality or that allow the school district to access the communications to ensure that appropriate instruction is occurring. It is possible that the teacher's needs can be met with another tool that is safer or more secure.
2. ***If there is an option for the supervisor to receive messages simultaneously or have access to the communications – use it!*** The district should be monitoring (to

the extent it can) all aspects of the education being provided. That said, a lot of electronic communication is going on and a principal cannot possibly participate in every communication. Staff need to know that if this is an option, it can be exercised. And if it is not an option, staff need to know that they will be required to share all communications if questioned.

3. ***Districts must notify the parents.*** Make sure that parents understand how instructors will be communicating with their students. If there is a concern regarding the communication, tell parents who they should contact.
4. ***Train staff.*** Yes, professional development needs to continue even when the schools are closed. Remind employees of the requirements of Policy GBH such as restrictions on the times in which communication can take place (between 6 .m. and 10 p.m.) Also remind them that the districts expect their communications to be professional and education-related.

### **Given the current situation, can the Board delay making decisions regarding employment contracts?**

No. State statute requires that districts notify probationary teachers and administrators if their contract will be renewed no later than April 15. The district must provide the contract by May 15. Section 168.101, .126, RSMo. Tenured teachers must be notified of their salary and the school calendar no later than May 15. §§168.110, RSMo. There are no emergency waivers for these provisions.

### **Given the current economic uncertainty, can the Board delay setting a salary schedule for next year?**

The Missouri legislature is struggling to pass a budget due to the uncertainty of projected revenues. That means school districts will also have a difficult time setting their budgets. Personnel costs are the largest portion of a school district's budget, so it is natural for a Board to want to wait if possible to make final decisions on staff salaries for next year.

The Board cannot wait forever and ultimately will have to pass a budget by the end of June. However, districts can buy themselves a little time by issuing teacher or administrator contracts with the current year's salary and the following language:

The Teacher shall be paid \$\_\_\_\_\_ annually. This amount will be increased in accordance with any salary schedule adopted by the Board no later than June 30, 2020.

This language allows the district to meet the May 15 statutory deadline but gives the Board until the end of June to make final decisions regarding salary.

**Should the district pay contractors even though they are not providing services now that school is closed?**

Districts may not have a choice. The Coronavirus Aid Relief and Economic Security (CARES) Act that the U.S. Congress passed on March 27<sup>th</sup> provides supplemental aid to states and school districts. If your district receives that aid, the law requires recipients to continue to pay employees and contractors during school closures due to COVID-19, “to the extent practicable.”