

Schools are closed. Now what? Guidance for North

COVID-19 Response Resource Center: Timely Counsel for your Business

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In light of CDC recommendations regarding COVID-19, on March 15, 2020, North Carolina Gov. Cooper issued an executive order closing all public schools in North Carolina for two weeks, beginning Monday, March 16, 2020, through March 30, 2020. On March 23, 2020, Gov. Cooper extended the closure to May 15, 2020.

North Carolina State Board of Education and Department of Public Instruction is providing North Carolina-specific guidance regarding what local boards of education and school districts are to do while schools are not in session and when students return to school. Further, we are staying up-to-date on federal and state employment laws as they are issued. We will distribute further information as more firm information comes to light.

In the meantime, North Carolina boards of education and districts should comply with U.S. Department of Education guidance. This alert will focus on the most pressing issues in light of Governor Cooper's executive order.

Privacy

Student Privacy Under the Family Educational Rights and Privacy Act (FERPA)

- Personally identifiable student information remains confidential.
- As public health authorities have determined that COVID-19 is a significant threat to students or other individuals in the community, then the U.S. Department of Education provides that this is an emergency allowing disclosure of personally identifiable information without prior written consent. In light of Governor Cooper's executive order, schools likely may release personally identifiable information without prior written consent on a case-by-case basis in order to protect the student or another individual, but only to those authorized to receive it on a need-to-know basis. This would include to public health departments, but not to the media or whole school community. The general rule, though, remains that personally identifiable information is confidential.

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- General emergency preparedness does not meet the requirements allowing a school district to disclose personally identifiable information without prior written consent from the student's parent or guardian. There must be a specific emergency.
- Parents and other students generally are not appropriate parties to disclose personally identifiable information about specific students, however.
 - There may be the rare instance where a school may determine that parents of students are appropriate parties, for example, a student with COVID-19 is an athlete who has been in close proximity with other students. In such a situation, parents may need to be aware of this information in order to protect their own children or themselves. School officials should determine case-by-case to whom such information may be released. Only parents who need to know this information should receive it.
- Under Article 6 of Chapter 130A of the General Statutes, COVID-19 is a reportable communicable disease. School principals are mandatory reporters of communicable diseases and must report to the local health department if the principal has reason to suspect that a person within the school has a communicable disease.
 - North Carolina DPI has requested schools immediately notify them if a school learns of a confirmed COVID-19 case in the school.
 - School principals should seek prior written consent from parents if possible before reporting.
 - If a school principal cannot obtain prior written consent, the school must record the disclosures as described below.
- If a school decides to so disclose personally identifiable information without prior written consent, the school must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed. This is most likely to arise by principals complying with North Carolina Communicable Diseases Act, which require school principals to report to the local health department if the principal has reason to suspect that a person within the school has coronavirus or COVID-19.
- As always, schools may release non-personally identifiable information without prior written consent, such as whether students or families at the specific school have tested positive for COVID-19, without revealing which students or families.

Employee Privacy Under Article 21A of Chapter 115C of the General Statutes

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- Schools should not tell parents or students that a specific teacher or other school official has COVID-19 or share other information from an employee's personnel file.

Students with Disabilities

- The April 1 child count will be extended, but the due date has not been determined.
- Educating students with disabilities:
 - If the public school is not providing education to students at all, then that public school is not required to provide services to students with disabilities during this time, including homebound services. No compensatory education is required for such time. DPI has also given guidance that the same is likely true for abbreviated school days—EC services may also be abbreviated by the same fraction.
 - However, as North Carolina moves to virtual instruction, public schools must ensure that students with disabilities receive the special education and related services under their IEP or 504 Plan to the greatest extent possible. Unless equally effective alternate access is provided, distance learning must be accessible to students with disabilities, meaning they must be able to obtain the same information and engage in the same interactions, with substantially the same ease of use, as their non-disabled peers. This is particularly important for students who use assistive technology: The online learning tools must be accessible to students with disabilities and compatible with the various forms of assistive technology that students might use to help them learn. Automated checkers and manual quality control should be used to determine whether distance-learning programs are accessible. Schools should pay particular attention to ensuring accessibility for students who are blind, have low vision, are deaf or hard-of-hearing, have mobility disabilities affecting their hand-coordination, have seizure disorders, and have cognitive disabilities. If accessibility of a certain resource is impossible, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services, for instance, reading a document aloud or recording instructions to be replayed.
 - Educators and parents should be creative. Consider distance instruction, teletherapy, teleintervention, meetings held in digital platforms, conference calls, online options for data tracking, documentation, instructional packets, recorded presentations, videos with accurate captioning, accessible reading materials, and written assignments.
 - OCR has released a brief seven-minute webinar regarding the legal obligations surrounding distance learning.

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- School districts may need to provide technology to students who would not otherwise have access if needed to access the instruction.
- There may be exceptional circumstances rendering access impracticable or impossible. In these situations, keep a log of all services not provided and the dates on which the services should have been provided. Keep in mind that specially-designed instruction requires instruction, such as via video chat, not just specially-designed work packets.
 - If possible, IEP Teams should meet to discuss and document the service delivery during a prolonged school closure and the appropriateness of the revision.
 - When school resumes, the IEP and 504 Teams should meet to determine whether compensatory services are needed under applicable standards.
- While work packets are not specially designed instruction, if schools are providing work packets to students without disabilities, they must provide work packets to students with disabilities.
- Related services:
 - Schools should consider using teletherapy to provide related services, such as occupational therapy and physical therapy. The services won't be exactly the same as they are in school, but there are ways to make it work if the schools, service providers, and families collaborate.
- Evaluation:
 - Evaluations that require a face-to-face assessment or observation should be delayed until school reopens.
 - Evaluations that do not require a face-to-face assessment or observation may take place while schools are closed, if the student's parent or guardian consents.
 - Evaluations should not be conducted virtually via video conferencing. This allows testing protocols out of the district's hands, posing a serious risk to the protocol being copied or transmitted by third parties (e.g., parents), invalidating the test, and leaving the district open to lawsuits.
 - Conduct all the evaluations you can without face-to-face interaction, and the face-to-face evaluations and observations as soon as school resumes. Log how COVID-19 is impacting the evaluation timeline.
- Placement:

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- When schools resume, if a child is absent for an extended period (more than ten consecutive school days) because the child is infected with COVID-19 or is at high risk of severe medical complications and therefore excluded from school, the IEP or 504 Team must meet to change the child's placement and IEP, if needed. Specifically, the IEP or 504 Team must determine whether the child would benefit from homebound services. Homebound services should be provided through online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities to prevent transmission to the child's homebound instructor(s). Such services must be accessible to the student considering the student's disabilities and any assistive technology the student uses. If services are impossible or impracticable and the child does not receive services, the IEP and 504 Team should meet when schools resume to determine whether compensatory services are needed under applicable standards.
- Financing:
 - Schools may use Part B funds to disseminate health and COVID-19 information specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information to school personnel, parents, and staff related to the provision of special education during this public health emergency.
- Timelines:
 - None of the IDEA timelines have been extended by statute or regulation.
 - Initial eligibility
 - An initial evaluation must be conducted with 90 days of receiving parental consent.
 - There is no specific deadline for making the eligibility determination.
 - The IEP Team must meet and develop an initial IEP within 30 days of a determination of eligibility.
 - IEPs
 - IEPs must be reviewed annually.
 - IEP Teams may make addenda to IEPs without convening a meeting, and may instead agree to develop a written document.
 - IEP Teams are not required to meet in person when schools are closed. If meetings are absolutely needed, virtual communications (to ensure meaningful parent participation) should be used, but school districts must have parental consent. Maintaining student confidentiality during this time is still required, however, so virtual meetings are not

Schools are closed. Now what? Guidance for North Carolina Public School Districts

recommended by DPI. Regardless of whether an IEP Team meeting is held, case managers should communicate frequently with parents regarding the child's services. At this time, annual review timelines have not been changed but may be in the future.

- Reevaluations
 - Reevaluations must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary.
 - Reevaluations may be conducted through a review of existing evaluation data without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed.
- State complaints
 - Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint.
 - The complaint investigator will work with the LEA to determine the timeline for the specific complaint.
- Mediations
 - North Carolina state employees and contractors are prohibited from statewide travel, so mediations may only be held virtually, if possible for the parties. Otherwise, mediation dates will need to be rescheduled.
- Due process hearings
 - When a parent files a due process complaint, the district must convene a resolution meeting within 15 days of receiving notice of the parent's complaint, unless the parties agree in writing to waive the meeting or to use mediation.
 - The parties may mutually agree to extend the resolution timeline because of unavoidable delays.
 - Hearing officers may grant extensions of time at the request of either parties for other deadlines.
- Corrective action
 - School districts should coordinate timelines in collaboration with the Corrective Action Coordinator.

Using Remote Learning Opportunities

- Information about using North Carolina's Remote Learning Resources may be found here.

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- Many internet service providers are lowering the cost of internet services, or providing it free, during this time. Schools should provide this information to families if virtual instruction is a reality for their school district.
- Schools are using distance working and many have created forms and rules for distance working. Student confidentiality should be a priority with any electronic access to student data.
- School districts may stage school buses to provide wireless hotspots for student connectivity under N.C.G.S. § 115C-242(6).

Communicating about COVID-19

- Schools must ensure effective communication with parents with disabilities and meaningful access to adults and students with limited English proficiency.
- Under Article 6 of Chapter 130A of the General Statutes, COVID-19 is a reportable communicable disease. School principals are mandatory reporters of communicable diseases and must report to the local health department if the principal has reason to suspect that a person within the school has a communicable disease. If principals do so report, they must follow the FERPA guidance outlined above.

Assessments and Accountability

- President Trump announced on March 20, 2020, that the U.S. Department of Education will not enforce standardized testing requirements in elementary through high school this year, which affects EOGs and EOCs. The N.C. Board of Education approved a one-year waiver request from the federal testing requirements. Now, the North Carolina General Assembly will decide whether to suspend the tests. The General Assembly also must decide to waive exams not required by the federal government, such as N.C. Final Exams.
- The March 17 and 31 ACT test dates will be rescheduled.
- The March 30-April 10 ACT WorkKeys test window has been postponed.
- March 20 Testing Updates Webinar has been postponed.
- The April 4 ACT test date has not yet been changed.
- The May 2020 IBO Exams (scheduled between April 30, 2020, and May 22, 2020) will no longer be held. Depending on what students registered for, the student will be awarded a Diploma or Course Certificate which reflects their standard of work.
- The College Board is allowing Advanced Placement exams to be taken at home. The exams will only cover material normally covered through March. The College Board is also providing free remote learning resources.

Child Nutrition

- North Carolina has received a waiver approving the service of meals in non-congregate settings and at school sites during school closures related to COVID-19.
- Schools can offer reimbursable meals to eligible children in households impacted by the school closures. The following methods may be used:
 - Parents or household members may pick up meals;
 - Volunteers may assist in meal distribution;
 - School districts may use transportation routes and school buses to distribute meals;
 - Law enforcement may distribute meals; and
 - Any other ways determined by local authorities.
- If a bus is used for delivering food under N.C.G.S. § 115C-242(6):
 - The school district should use transportation funds through PRC-056 to support the cost of transporting meals.
 - Sanitization professionals only should clean buses. If bus drivers are to perform cleaning actions, they must be provided training and written instructions. Under no circumstances should aerosols or unlabeled containers be carried on buses.
 - Buses do not need to be inspected so long as they are not transporting students, but districts should take reasonable measures to assure the safety and mechanical integrity of equipment.

Bullying and Harassment

- Bullying and harassment based on national origin, race, and disability, as well as other protected classes, remain prohibited. Schools should pay particular attention to bullying and harassment students may face because of their Asian ancestry or because they have tested positive for, or are regarded as testing positive for, COVID-19.

School Personnel

- March 16–30 are designated by default as “optional teacher workdays.”
- All staff remain in work status and are eligible to be paid.
- The Families First Coronavirus Response Act was passed and signed on March 18, 2020. Briefly: An eligible employee may receive ten days paid leave, if unable to work or telework for

Schools are closed. Now what? Guidance for North Carolina Public School Districts

certain covered reasons relating to COVID-19. An employee who is unable to work or telework because the employee must care for a child whose school is closed may take 12 weeks of leave at a rate of 2/3 pay, subject to certain caps. More information may be found in the alerts below.

Please see the alerts below on state and federal employment legislation for more information, including paid leave benefits.

- DOL Releases Mandatory Employee Notice Under the Families First Coronavirus Response Act
- Department of Labor Issues First Guidance on New Leave Laws
- Guidance for Employers with Salaried Employees in Response to COVID-19
- Additional Coronavirus Guidance from EEOC
- Employer Tax Relief Under COVID-19 Legislation
- New Law Requires Many Employers to Provide Job-Protected Leave and Paid Benefits for Absences Related to COVID-19
- Important Coronavirus Guidance from EEOC
- NC Governor Cooper Expands Unemployment Benefits to Workers Affected by COVID-19

Contracts

- School districts have contracts for a wide variety of goods and services. Each contract should be reviewed carefully by an attorney to determine the school district's rights and obligations during this time.

Funding

- To assist school districts in supporting students, Governor Cooper has provided financial flexibility and relief to address unanticipated needs resulting from COVID-19, including remote learning, school nutrition, cleaning and sanitizing schools and buses, protective equipment, and childcare.
- DPI will establish a \$50 million flexible allotment for all public school districts to address COVID-19-related expenses, funded with unused FY 2018–19 carryforward funds, unspent FY 2019–20 Summer Reading Camp funds, and funds from the State Emergency response and Disaster Relief Fund. Technical guidance is forthcoming, but generally:

Schools are closed. Now what? Guidance for North Carolina Public School Districts

- School districts may use their Textbooks and Digital Resources and School Technology allocations for devices, online subscriptions, and training for instructional personnel for digital and remote learning.
 - School districts may flexibly use their Transportation, At-Risk Student Services, Disadvantaged Student Supplemental Funding, and Low-Wealth Supplemental Funding allotments for school nutrition, school and community-based childcare, cleaning and sanitizing schools and buses, protective equipment, and remote learning.
 - Schools may use Part B funds to disseminate health and COVID-19 information specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information to school personnel, parents, and staff related to the provision of special education during this public health emergency.
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Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.

If you have any questions about school districts obligations, please contact Jill Wilson, Elizabeth Troutman, or Sarah Saint.

Tags: Centers for Disease Control and Prevention (CDC), Remote learning, U.S. Department of Education