

Pennsylvania School Code Revisions in Response to COVID-19

PUBLISHED ON

March 27, 2020

On March 27, 2020, Gov. Tom Wolf signed into law Act 13 of 2020, significantly revising the Pennsylvania Public School Code. [The new Section - "Pandemic of 2020"](#) - addresses a variety of issues confronting local education agencies as schools continue to function during the coronavirus pandemic. This state-level legislation intersects with federal law and guidance.

The amendments address a variety of items that are anticipated to arise due to the shift from in-person instruction to what the [Pennsylvania Department of Education \(PDE\) is describing as "Continuity of Education."](#) According to PDE, any educational practices, including Planned Instruction, Enrichment and Review, or a combination of both, that provide students with the opportunity to develop and maintain skills during the prolonged school closure qualify as Continuity of Education.

As an overarching principle, the amendments require that school entities make a good faith effort to offer Continuity of Education to students "using alternative means." This position is consistent with the [guidance of the U.S. Department of Education](#) (DOE), and may constitute a departure from what many Pennsylvania schools are or are not providing to students due to the swiftness with which school buildings closed.

School Entities Definition

- A public school entity is defined as a school district, intermediate unit, area career and technical school, charter school cyber charter school, or regional charter school a child attends pursuant to the compulsory attendance requirements of the School Code.
- Certain requirements apply to school bus transportation contractors, private schools, non-public schools, private residential rehabilitative intuitions, and home education programs.

School Employees

- Compensation
- Leave through the federal Families First Coronavirus Response Act (FFCRA)
- Other benefits
- Certification, teacher evaluations, and professional development
- School staff with cleaning duties

Instructional Program and Operations

- Each school entity is required to create a formal continuity of education plan, which will be posted on the school entity's publically accessibly website and submitted to the Pennsylvania Department of Education. PDE is required to

provide guidance to school entities on these plans, and Intermediate Units may provide technical assistance.

- The new provision includes a number of waivers, including: the requirement of 180 days of pupil instruction; career and technical education program minimum hour requirements; and prekindergarten minimum instructional hour requirements.
- [As reported in a previous alert](#), the General Assembly permitted districts to submit plans and seek approval for Flexible Instructional Days. The new provision permits the Secretary of Education to increase the number of Flexible Instructional Days allotted to each district and waives the application deadline. Note, however, that activities provided pursuant to a Flexible Instructional Day, as Section 1506 is written, are intended to replicate board approved curriculum.

Special Education and Pupils

- School entities are required to provide written notice to the family of each student with an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA). However, the amendments do not specify the required elements or format of such notice. Given the U.S. [Department of Education's evolving guidance](#) and the potential for liability exposure under IDEA and Section 504, entities are encouraged to collaborate with special education counsel in order to meet this obligation.
- Any payments due to be made by a public school entity or the Commonwealth to a private residential rehabilitative institution for any student enrolled as of March 13, 2020, will not be decreased due to the private residential rehabilitative institution's closure.
- Any payments due to be made by a public school entity to a private or non-public school by the public school entity for a student's placement will not be increased or decreased due to the private or non-public school's closure as long as the following conditions apply: the student was placed by the public school entity (for example, a special education placement); the student was enrolled as of March 13, 2020; and the private or non-public school is offering continuity of education during for the duration of the closure. Despite this last requirement, the legislation is silent regarding whether private and non-public schools must submit a continuity of education plan to PDE or post a plan on their website.
- Standardized testing requirements for the following tests have been waived:

Other Issues

- The General Assembly delegated authority to the Secretary of Education to order continued school closure for the duration of the 2020 pandemic, if necessary.
- School bus transportation contracts may be renegotiated to ensure that the contractor maintains its personnel and fixed costs, including administrative and equipment, are maintained for the duration of the closure. (See below for transportation reimbursements and requirements of the school bus transportation contractor).
- Waiver of the requirement to submit education documentation pursuant to Section 1327.1(e)(1), 1327.1(e)(2), and 1327.1(h)(1) to the Superintendent of the district of residence for home education programs.
- The following provisions address payments due to public school entities:

Provisions Applicable to Entities Other Than Public Schools

- The following provisions apply to school bus transportation contractors:
- The following provisions apply to private or non-public schools:
- The following provisions apply to private residential rehabilitative intuitions:
- The following provisions apply to home education programs under Section 1327.1:

The General Assembly acknowledged the potential for uncertainty by including a catch-all waiver provision. With the exception of three labor provisions, the catch-all provision permits education agencies to apply directly to PDE to waive any other requirement if the necessity is brought about by the pandemic of 2020 and the waiver directly relates to staffing needs, the instructional program, or operations of the school entity.

Even though the legislative amendments cover many facets of school operations that have been disrupted due to the pandemic, practical application of the amendments will undoubtedly raise issues that are unique to each education agency's circumstances. A nuanced legal analysis of each situation and an understanding of the rapidly evolving circumstances will be necessary as education agencies assemble solutions to problems that may not yet be known.

If you have any questions on this new information, please contact any of the attorneys in the [Barley Snyder Education Group](#).

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