



# CORONAVIRUS/COVID-19 FAQs FOR OKLAHOMA PUBLIC SCHOOLS UPDATED MARCH 23, 2020

## ➤ ABOUT THE CORONAVIRUS

The coronavirus disease (COVID-19) global pandemic is significantly impacting workplaces, communities and schools. The Oklahoma State Department of Education (OSDE) is closely monitoring the outbreak that originated in Wuhan City, Hubei Province, China.

Resources are available now and being updated as new information becomes available. The Centers for Disease Control (CDC) has developed [guidance for schools](#) that includes information on what to do in the event of COVID-19 being identified in the school community and [FAQs for school administrators](#). Please bookmark the Oklahoma State Department of Health (OSDH) [web page devoted to the coronavirus outbreak](#). This site contains a number of guidance documents – many from the CDC and other public health entities – on prevention, symptoms, testing and more. In addition, a dedicated COVID-19 Call Center is open to the public for any questions regarding the Oklahoma response at 877-215-8336. The United States Department of Education (USDE) has also made resources and guidance documents available at [ed.gov/coronavirus](http://ed.gov/coronavirus). To help adults talk to children about COVID-19, both the [CDC](#) and [PBS](#) have developed resources.

Together we can ensure that public schools, students and staff are in safe and healthy environments and that the most up-to-date information is shared with education stakeholders as it becomes available.

We have received a number of questions from districts, which you will find below. We will update and redistribute this document as needed.

## ➤ MANDATORY CESSATION OF OPERATIONS

### What action did OSDE and the State Board take at its emergency meeting on March 16, 2020?

On March 16, the State Board of Education ordered all accredited public schools to cease operations, effective March 17 until April 6, 2020.

### What is included in “operations” that must be ceased?

All instructional services, grading and extracurricular activities, staff development, trainings and conferences must cease. However, essential clerical and administrative activities such as business management (i.e., encumbrance clerk, human resources, fiscal services, governance), nutrition services and maintenance may continue as needed.

### What schools and services are included in the order?

The order applies to all public schools (including traditional school districts, brick and mortar charter schools and statewide virtual charter schools). *See* below for questions and answers relating to specific services.

### Will the dates of the cessation order be extended?

OSDE is prepared to take necessary measures to ensure the safety and well being of our students, their families, educators and all vulnerable populations, which may include an extended cessation. We are continuing to actively monitor this situation and will make decisions on an ongoing basis as additional information becomes available.

### **Are statewide virtual charter schools or any other school offering virtual services exempt from the order of cessation?**

No. As this is a statewide system of schools, it's important we take every precaution regarding the health of those who meet with students in any public schools, which includes blended and virtual schools. The state cannot carve out unique exceptions during a national state of emergency or response to a world pandemic. Moreover, an inconsistent approach would impact requirements for students with IEPs and English learners. If instruction were to continue online, students on IEPs would be required to receive services – including in-person services – when it would be difficult to ensure their safe continuation.

Additionally, there are emergency provisions that can only be leveraged in a statewide closure – for example, the ability for all teachers to continue to be paid in the event of an epidemic. Also, despite the fact that teachers in virtual schools do not have frequent contact with students, school staff has contact with each other.

### **Can concurrent enrollment courses continue?**

Possibly, depending on arrangements with the particular higher education partner. Concurrent enrollment classes are primarily designed and operated through the Oklahoma State Regents for Higher Education. The State Board of Education decision prohibits instructional activities conducted by or on the property of an accredited public school. This prohibition does not extend to instructional activities by an institution of higher education that is not conducted on the property of an accredited public high school.

### **Are CareerTech facilities to be closed?**

This order prohibits CareerTech courses for secondary students during the time of the closure. Additionally, because technology centers are considered an extension of the partner school and are defined as an accredited public school, they are recommended to follow the closure.

### **Are private schools, even those accredited by the State Board of Education, subject to the cessation of activities order?**

No. The State Board of Education decision solely relates to public schools.

### **Will teachers and administrators be paid during the closure period?**

Yes. Oklahoma law provides that teachers and administrators shall be entitled to pay for any time lost when school is closed on account of epidemics. *See* 70 O.S. § 6-101(H). The reference to “teachers and administrators” effectively means a person certified in the area in which they are employed who serves as “district superintendent, principal, supervisor, a counselor, librarian, school nurse or classroom teacher or in any other instructional, supervisory or administrative capacity.” *See* 70 O.S. § 6-101.3(8) and 1-116(1). This would apply regardless of the source of funding for the position and would include but not be limited to teachers paid with federal funds.

### **UPDATED: Are support employees able to be paid during the closure period?**

Support employees have expressed concern about the potential to lose pay during the closure of schools. If a district's payroll for 10-month employees is annualized, districts can continue to pay support employees during a short-term closure for the compensation they have already accrued but have not yet received. The OSDE is working with the state Legislature on a possible statutory solution to allow support employees to continue to be paid during this time.

The Board's order authorizes districts to continue **essential clerical and administrative functions**. Included in this is an authorization that support employees may be required (as determined by each local district) to come to work to provide services deemed essential, such as deep cleaning of the building, even if those support employees are not normally paid to perform cleaning services for the school district. This will allow the school to continue to pay employees while school is closed. Administrative staff will need to run payroll, pay bills and open mail during the school closure and will play an important role in school and district communication. Cafeteria employees may be required to prepare meals for students during a school closure in accordance with the newly released authority from the U.S. Department of Agriculture (USDA). As long as work hours can be documented and confirmed, local districts may continue compensating support employees during a school closure. Some support employees may choose to utilize sick leave if they or a family member are impacted by the coronavirus.

**NEW: What options are there for support employees to be awarded additional leave time?**

Some employees, including those who may be carrying out essential functions during the statewide school closure, may be at higher risk of serious complications from COVID-19. This includes older adults and those who have serious chronic medical conditions such as heart disease, diabetes, lung disease or auto-immune disorders. School districts should make every effort to protect high-risk employees by allowing additional sick or leave time. These issues should be dealt with on a case-by-case basis, but districts are encouraged to be flexible with use of sick and other available leave. Also, some of these cases may include issues covered under the Americans with Disabilities Act (ADA). School districts are encouraged to contact their retained counsel for advice on specific issues that may be covered by the ADA.

Pursuant to Oklahoma law, districts may award up to 10 days of emergency leave and an additional 10 days of sick leave. For districts that negotiate with a support employee bargaining unit, an amendment to the current bargaining agreement will be necessary to provide additional leave. If the district does not negotiate with a support employee bargaining unit, the board of education may call a special meeting and adopt a revised leave policy for support employees. Districts are encouraged to consult their retained legal counsel for additional information and specifics on application. *See* 70 O.S. §6-101.40; 70 O.S. § 6-104.; 70 O.S. §6-147; Atty. Gen. Op. No. 84-12 and Informal Atty. Gen. Op. No. 91-632

Additionally, the Families First Coronavirus Response Act ([H.R. 6201](#)) passed by Congress and signed into law by President Trump on March 19, 2020, also provides relief to employees. Effective April 2, 2020, the new law allows full-time employees to receive up to 80 hours of paid sick leave and part-time employees to receive up to the number of hours they would normally work over a two-week period. For additional information, please read [OSSBA's summary](#) of the legislation.

**NEW: Some of our personnel who are performing essential functions traveled during Spring Break. Should they be allowed to resume those duties?**

Some city and county health authorities in Oklahoma and around the nation have advised a 14-day self-quarantine or self-isolation for those who traveled outside the state or to areas of confirmed community spread during Spring Break. Determinations should be made with an abundance of caution and common sense on a case-by-case basis, dependent on location of travel, mode of travel and evidence of community spread in the travel destination.

**Will substitute teachers be paid during the school closure?**

At this time, there is nothing in state statute that would allow for substitute teachers to be paid during the closure.

## ➤ SCHOOL BOARDS

### **UPDATED:** What flexibilities exist in the event a school board is not able to hold a public meeting?

Local boards of education are permitted, but not required, to meet during the cessation of operations. If a local school board needs to hold a meeting, it may do so via regular, special or emergency meeting as authorized by the Oklahoma Open Meetings Act. The OSDE strongly encourages those holding any public meeting to follow the procedures authorized through Senate Bill 661 (outlined below) and adhere to social distancing guidance and recommendations of the Centers for Disease Control. In the event of a meeting, school boards are encouraged to proactively consider policies that give the district superintendent authority for a limited time to take specific actions on behalf of the board and to update policies, practices and plans related to COVID-19.

SB 661, which the Governor signed into law on March 18, 2020, is effective immediately and authorizes a public body (including school boards) to hold meetings by teleconference or videoconference without also having an in-person meeting location. While teleconference with audio-only is an option, the Attorney General has stated that videoconference is preferred when available. Meetings are also required to be recorded by written, electronic or other means. In order to conduct a meeting by teleconference or video conference, boards must adhere to the following:

- Each member of the board is required to be audible or visible to each other and the public, and the meeting must stop if the audio is disconnected. Although prior authorizations for meetings via teleconference or videoconference required each site and room of a videoconference to be open to the public, SB 661 contains no such requirement.
- All votes occurring during any teleconference or videoconference meeting are to be recorded by roll call votes.
- The meeting notice and agenda must indicate whether the meeting will be held via teleconference or videoconference, identify each member of the public body appearing remotely, the method of each member's remote appearance (teleconference or videoconference), and the identity of the public body member(s) who will be physically present at the meeting site (if any). Note: A member identified on the notice and agenda as appearing remotely may change their mind and appear at the physical site; however, a member identified as appearing at the physical site may **not** change their mind to appear remotely.
- The public must be allowed to participate and speak, as allowed by rule or policy of the public body, and the notice and agenda must include the information needed to participate, such as the full website address or the call-in number along with any codes or other information.
- Boards are not required to make meeting notices and agendas available to the public in the principal office of the public body or at the location of the meeting 24 hours prior to the meeting. However, these documents must still be made available on public websites and through distribution lists.

The provisions of SB 661 are in effect until November 15, 2020, or until the Governor terminates the state of emergency, whichever comes first. Read [FAQs from the Oklahoma Attorney General's Office](#) or [OSSBA](#) for additional guidance.

### **NEW:** For school districts with elections (board members, bonds, etc.) in April, what action does the board need to take as a result of this pandemic?

The Secretary of the State Election Board has issued a [declaration](#) recognizing that national and local emergencies currently exist that make substantial compliance with state and federal election laws impossible

or unreasonable, and that the existing emergencies could disrupt voter registration, voting, the tabulation of votes, or the certification of election results. As a result, the Board has authorized any election scheduled for April 7, 2020, to be rescheduled on any other allowable date authorized by law. *See* 26 O.S. § 3-101. No later than Monday, March 30, 2020, school boards wishing to change their election dates are required to provide a resolution to the County Election Board Secretary that (a) rescinds the Tuesday, April 7, 2020, election date and (b) reschedules the election.

For rescheduling board member elections, boards will need to:

- Adopt a modified resolution utilizing the document that called the Tuesday, April 7, election; and
- Submit the modified resolution to the appropriate county election board secretary by Monday, March 30, 2020.

For rescheduling bond elections, boards will need to:

- Contact their financial advisor;
- Review the modified resolution prepared by the district’s financial advisors, which must include language to rescind the Tuesday, April 7, election;
- Vote at a meeting to reschedule that election to any election date allowed by 26 O.S. § Section 3-101; and
- Submit the modified resolution to the appropriate county election board secretary by Monday, March 30, 2020.

Sample agenda language for board meetings on these topics:

- Discussion and possible board action to modify resolution calling for 2020 school board member election; or,
- Discussion and possible board action to modify resolution calling for 2020 school bond issue election.

## ➤ **WORKPLACE/CAMPUS**

**Even with a cessation of operations until April 6, there are certain campus functions and services that may continue during this period.**

### **Does the order to cease operational closures prohibit a school district from compelling staff to attend or be present at school?**

Yes. The Board’s order only authorizes **essential clerical and administrative activities and services** to continue during the period of closure. While each determination of what is “essential clerical and administrative activities” is a local decision, examples of this may be business management (i.e, encumbrance clerk, human resources, fiscal services and governance), nutrition services and maintenance may continue as needed. For additional information, please see the question and answer relating to the payment of support employees during the period of closure.

### **Are there any known staff of public schools who have confirmed cases of the virus?**

Not at the time of this document’s release. Schools should notify a local health department with any questions or concern about an ill student and staff members.

### **Will school officials be notified if there is a staff member who tests positive for coronavirus?**

Yes. Public health officials will notify a school official if there is a positive case associated with a student or employee of the school. Public health staff will work with school officials to identify who was in contact with the case and to begin the process to track and monitor contacts. Spread of the virus can also be viewed on the [CDC website](#) and [State Department of Health coronavirus website](#).

### **Can districts refuse to let someone on the campus if they are suspected of having the virus?**

Yes. Schools should notify a local health department with any questions or concern about any coronavirus-related illness of a student or staff member, make preparations to send that individual home and advise them to seek medical advice.

In addition to guidance provided elsewhere in this document, school districts generally have the right to control and restrict access to campuses. This can be, and often is, through employee policies, student handbooks and policies relating to students and the board of education's powers and duties under Oklahoma laws and regulations. School districts should also consult with their local health authorities and incorporate any guidance provided by the local health authorities into their decision on whether to permit a staff member access to public school facilities. This is on a case-by-case basis.

### **May a school district enroll new students during a school closure?**

New students who move into a school district and request to enroll during a cessation of operations must be allowed to enroll, although they are not required to be offered education services until operations resume. See 70 O.S. §§ 1-113 and 1-114.

While new students who wish to enroll should continue to be enrolled on an individual basis during a school closure, public enrollment events (such as those for initial kindergarten enrollments) cannot be held during the cessation of operations. Re-enrollment meetings and events for existing district students should also be postponed until regular operations resume.

As part of planning for the return to regular operations following school closure, school districts and charter schools should consult with their local health authorities to address health concerns regarding school attendance for students who have traveled to areas heavily impacted by coronavirus or who are otherwise at high risk for exposure.

## **➤ SCHOOL CALENDARS/INSTRUCTION**

### **Is there an exception to the 180 day/1,080 hours requirement for an annual instructional year?**

Yes. Generally, state law requires that a school district offer instructional services to students for a minimum of 180 days or 1,080 hours per year. See 70 O.S. § 1-109. State law further provides that if a school district does not maintain school for a full term (i.e., 180 days/1,080 hours), it *shall* have its state aid reduced proportionately. See 70 O.S. § 18-110. However, the State Board of Education can waive the mandatory reduction of state aid of a school district not meeting the requirements for the calendar year when conditions *beyond the control of school authorities* make the maintenance of the calendar year term impossible. The OSDE anticipates bringing this recommendation to the State Board at its March 25, 2020, meeting.

## ➤ ASSESSMENTS & SCHOOL ACCOUNTABILITY

### **NEW:** What is the status of state assessments for this school year?

The U.S. Department of Education has granted a waiver to Oklahoma to forego federally required state tests in grades 3-8 and high school for the 2019-20 school year. Requested by Superintendent Hofmeister, the waiver includes the English language arts (ELA) and mathematics test each year in grades 3-8, science in grades 5 and 8, and the College Career Readiness Assessment (e.g., ACT/SAT) for ELA, mathematics and science in grade 11. As a result, the aforementioned tests will not be administered, materials will not be shipped to schools and training for test proctors for this year is unnecessary. Districts that were preparing, through staff development or otherwise, for the administration of the statewide assessments should cease such activities. Additionally, the Oklahoma School Report Cards – which are calculated with data from federally required assessments and other indicators – will be suspended for the 2019-20 school year.

### **NEW:** Since the U.S. History test is not federally required, will schools still be required to administer this assessment?

No. The OSDE will take an emergency rule to the State Board of Education on March 25, 2020, to allow the agency to provide a medical exemption for state assessments for all students. As a result, pending board action, students scheduled to take the U.S. History assessment this year will be granted a medical exemption due to the coronavirus pandemic.

### **NEW:** How will AP exams be administered if schools remain closed?

College Board, the entity that operates AP testing, released updated information on March 20, 2020, regarding administration of AP exams. It states:

- Traditional face-to-face exam administrations will not take place. Students will take a 45-minute online free-response exam at home.
- Some students may want to take the exam sooner rather than later, while the content is still fresh. Other students may want more time to practice. For each AP subject, there will be two different testing dates.

For more information, please refer to College Board's newest guidance on [AP Updates for Schools Impacted by Coronavirus](#) or contact Robbyn Glinsmann at 405-522-3522 or [Robbyn.Glinsmann@sde.ok.gov](mailto:Robbyn.Glinsmann@sde.ok.gov).

### **NEW:** How will eighth-graders meet the requirements of the Driven to Read program?

Oklahoma law requires students to successfully complete the reading portion of the eighth-grade English language arts (ELA) assessment in order to apply for a driver license or permit. *See* 70 O.S. § 1210.515. However, the test will not be administered this year as a result of the coronavirus pandemic. Accordingly, the OSDE will take an emergency rule to the State Board of Education on March 25, 2020, to allow the state to provide a medical exemption for this requirement. After communicating with the Oklahoma Department of Public Safety (DPS), it is the OSDE's understanding that this exemption will satisfy the requirements.

Students wishing to take the driver exam should also be aware that DPS has instituted the following restrictions:

- All driving skills tests have been canceled;
- Only 10 customers are allowed in an office at one time; and
- Every customer must have an appointment.

**NEW: How will third-grade students meet the requirements of the Reading Sufficiency Act (RSA) in the absence of the third-grade ELA assessment?**

Oklahoma schools are not expected to, and should not, administer the required end-of-year screening assessments for students in Kindergarten through grade three for the remainder of the school year. As a result of the cancellation of the third grade ELA test, schools should utilize data collected from screening, diagnostic and progress monitoring assessments prior to March 16, 2020, to make promotion and retention decisions.

For students who do not qualify for automatic promotion based on prior assessments or under a good cause exemption, a Student Reading Proficiency Team (SRPT) must be convened to make decisions about promotion or retention. SRPT meetings should convene virtually wherever possible or adopt social distancing guidelines, limiting gatherings to no more than 10 people at a time and maintaining six feet of space between each person, even in smaller groups. Since schools will not be able to complete the end-of-year assessments for RSA, they will not be asked to complete the End-of-Year RSA Report. More detailed guidance for districts making third-grade promotion decisions in the absence of OSTP scores will be forthcoming from the OSDE.

**NEW: What impact is there to the Alternate Assessment?**

The window for the Oklahoma Alternate Assessment Program (OAAP) opened on March 9, 2020, and is scheduled to close on May 1, 2020. As a result of the waiver granted by the U.S. Department of Education for all assessments, the Oklahoma Alternative Assessment Program (OAAP) is likewise canceled and any additional scheduled testing should cease.

## **► FUNDING**

The COVID-19 situation is fluid and evolving on a near-hourly basis. We strongly encourage schools to document funding and resources spent on COVID-19-related activities or services should they be necessary. Funding sources that may become available may operate on a reimbursement model or be funded based on documented costs.

**NEW: Are there any expenditures that might be reimbursable from a federal agency?**

Yes. President Trump declared a national state of emergency on March 13, 2020. As a result, provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act are triggered. *See* 42 U.S.C. 5121-5207 (the “Stafford Act”). Eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials that are not already reimbursable by the U.S. Department of Health and Human Services (HHS) or the Centers for Disease Control (CDC) may be reimbursed under Category B of FEMA’s Public Assistance Program. FEMA assistance will be provided at a 75% federal cost share.

State, territorial, tribal and local government entities and certain private nonprofit organizations are eligible to apply for [Public Assistance](#). Eligible assistance includes management, control and reduction of immediate threats to public health and safety such as Emergency Operation Center costs, training specific to the declared event, disinfection of eligible public facilities, technical assistance on emergency management, control of immediate threats to public health and safety and communications of general health and safety information to the public. Further information about eligible emergency protective measures can be found in the [Public Assistance Program and Policy Guide](#).

## ➤ ATTENDANCE

**Pursuant to the Order of cessation of operations, there will be no student attendance until at least April 6.**

### What state-imposed attendance requirements relate to a school district's eligibility to receive funding?

The only sources of school funding affected by student attendance are those that are distributed based on Average Daily Attendance (ADA). ADA is the average number of pupils present in a school district during a year or *other specified period of time* (emphasis added) and is derived by dividing the aggregate days of pupils present in each district by the number of days taught in each school district. *See* 70 O.S. § 10-103.1. A related administrative rule provides that for purposes of funding determinations a “student must be in attendance for two-thirds (2/3) of the first half of the school day to be recorded present for one-half day; likewise, a student must be in attendance for two-thirds (2/3) of the second half of the day to be recorded present for one-half day.” *See* OAC 210:10-1-5(f)(2)). These state-imposed attendance requirements relate only to a school district's eligibility to receive State Aid funding associated with a student; they have no bearing on a student's eligibility for course completion, which is determined at the district level.

Funding sources potentially impacted by having a large number of students absent include state-dedicated and local revenues (i.e., gross production tax, motor vehicle collections, school land earnings, county 4-mill levy). These sources are distributed based on the prior year's ADA. As a result, FY 20 distributions are not expected to be affected by the pandemic. Furthermore, the State Board of Education is prepared to consider adjusting the period of time over which ADA is calculated – to end March 1, 2020 – for the FY 21 distributions. *See* 70 O.S. § 10-103.1.

### How is chronic absenteeism different from a school's attendance policy?

Chronic absenteeism is a schoolwide measure that applies to all absences under a school's attendance policy. It has no bearing on a student's record, grade or eligibility for participation in activities. Generally, local attendance policies determine how and when a student is determined to be absent, including for purposes of course grades, participation in extracurricular activities, and completion of courses. State law provides that absences for certain purposes – such as documented illness or religious holidays – are to be excused. *See* 70 O.S. § 10-105. Beyond those absences statutorily classified as excused, local attendance policies determine whether an absence is considered excused or unexcused.

### Are there any attendance requirements that have any bearing on a student's eligibility for course completion, graduation, etc.?

Except for purposes of state funding and school accountability previously mentioned, any requirements for attendance in order to receive course grades or credit, graduation or participation in an activity are *solely determined at the local school district level*.

### What are the graduation requirements for students this year?

For the graduating class of 2019-2020, each district is to have adopted a plan that establishes the assessment or assessments those students are required to take in order to graduate. Awarding of credits, attendance and assessment requirements for graduation are solely determined at the local school district level.

## ➤ **TEACHER CERTIFICATION**

### **UPDATED: Will there be a disruption to the issuance of teaching certificates?**

Until further notice, the OSDE has closed the teacher certification office. Applications for new certificates, renewals and adding areas of certification may continue to be submitted online.

Pursuant to [Executive Order 2020-07 \(Third Amended\)](#), all occupational licenses (includes teaching certificates) are extended so long as the Executive Order is in effect and will not expire until fourteen (14) days following the withdrawal or termination of the Executive Order.

Additionally, the current legal guidelines for renewing standard teaching certificates provide that the effective renewal date for all standard certificates shall be July 1 of the calendar year in which the renewal application is received. The administrative rule governing the effective dates of teaching certificates states:

“Renewed standard certificates will become effective July 1 following receipt of the application provided the application is made prior to the expiration of the certificate. If a certificate has expired and a renewal application is submitted by December 31 of the year in which the certificate expired, the certificate shall be renewed with an effective date of July 1 of the year in which it expired.” (Oklahoma Administrative Code 210:20-9-95(b))

Subsequently, with the exception of teaching certificates that expired in a previous calendar year, all standard certificates renewed within the same calendar year are issued with an effective date of July 1. This existing approach to teaching certificate renewal ensures that a suspension or reduction in services affecting the Office of Certification would have no significant impact on Oklahoma teachers’ and administrators’ ability to renew their certifications.

### **Is any consideration being given to extending the date of emergency certificates?**

Yes. The OSDE is prepared to present an emergency rule to the State Board to extend the date of an emergency teaching certificate or authorize the renewal of an emergency certificate for an additional period of time.

## ➤ **STUDENTS WITH DISABILITIES**

### **In addition to state assessments and school accountability, what federal laws are potentially implicated due to coronavirus (COVID-19)?**

The ESSA and the Individuals with Disabilities Education Act (“IDEA”), as well as other federal programs like Child Nutrition Services, flow to states and then school districts under formulas that are unaffected by school closure. These funds will continue to be available to Oklahoma, and the OSDE has designated personnel who are essential to operations to ensure that during any closure of schools or operations, funding to schools will not be disrupted.

### **What happens to students eligible for special education services when school is canceled for all students due to COVID-19?**

The school/district is generally not required to provide services to the affected students eligible for special education services during that same period of time (*See* OSEP Letter to Pergament, December 2013). This general standard is especially true in cases where the school district will still provide the required minimum of school days. Further, if a district does not make any changes to their calendar and does not provide the required 1,080 hours or 180 days, said district may need to provide compensatory services to students on an IEP in order to ensure FAPE.

### **Is a school closure a change of placement?**

If the exclusion is a temporary emergency measure (generally 10 consecutive school days or fewer), the provision of services such as instructional telephone calls, homework packets, internet-based lessons and other available distance-based learning approaches is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days).

For long-term exclusions, an LEA must consider placement decisions under the IDEA's procedural protections of 34 CFR §§ 300.115 – 300.116 regarding the continuum of alternative placements and the determination of placements. Under 34 CFR § 300.116, a change in placement must be made by a group of persons, including the parents and others knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR § 300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520. For children with disabilities protected by Section 504 who are dismissed from school during an outbreak of coronavirus because they are at high risk for flu complications, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a child based on their high risk for influenza complications must be based on the individual needs of the child and not on perceptions of their needs based merely on stereotypes or generalizations regarding the disability in question.

### **How would a school closure due to COVID-19 impact IEP and Evaluation timelines?**

IEP annual due dates may not be adjusted, are required to be reviewed at least annually and the OSDE cannot waive these federal requirements for IEPs. A change in the school calendar will not affect or extend the due date of an IEP.

- Initial Evaluations must be completed within 45 school days of receiving an initial parent consent for evaluation. If the school calendar is changed, the due date for the completion of Initial Evaluations will change.
- Re-evaluations must be conducted every three years. A change in the school calendar will not affect or extend the due date of a reevaluation. This does not prevent a re-evaluation from being conducted prior to the three-year due date and therefore adjusting the next due date.
- For children with disabilities transitioning from SoonerStart and determined eligible for services under the IDEA Part B, IEPs must still be in place on or before their third birthday.

Scheduling IEP meetings is a local determination. The OSDE expects all districts to comply with requirements to timely convene IEP meetings for students. ***Should a district need to convene an IEP meeting, the OSDE recommends that the district deem these services to be essential administrative and proceed in accordance with the guidance below.***

In the current context and climate, schools are encouraged to avail themselves of the opportunity to ensure parent participation at meetings via alternate means, including telephone or videoconference, which are allowable under IDEA and corresponding regulations. 34 CFR § 300.322.

If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation must be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, provided the student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

## ➤ CHILD NUTRITION

### **UPDATED:** What existing school meal programs could be leveraged to feed students during a school closure?

School Food Authorities (SFA) may utilize a Seamless Summer Option (SSO) with respect to their USDA programs. SSO is a streamlined option for providing summer meals by continuing to follow several of the same operational requirements for National School Lunch Program/School Breakfast Program. Should the SFA choose to use the SSO, permission is also granted to allow service of meals at either school sites or non-school sites. SFAs must apply by contacting Child Nutrition Programs at 405-521-3327.

OSDE's Office of Child Nutrition has applied for six USDA waivers and is awaiting response. The meal options provided under these waivers are:

1. Waiver of the congregate feeding requirement so schools can have a Grab-and-Go meal or offer to deliver meals to the students. If meals are delivered, a count must be taken using the SSO Daily Meal Count Form. This waiver was approved March 16.
2. Waiver for certain areas dealing with Meal Patterns, which will allow schools to use existing inventories and serve more shelf-stable food. This waiver also allows schools to follow one age/grade group meal pattern when serving meals during this time. This waiver has not been approved.
3. Waiver to allow schools that fail to meet the 50% free and reduced area eligibility to serve meals on the SSO. Without this approved waiver, a school that does not meet the 50% free and reduced criteria would not be eligible for SSO. This waiver has not been approved.
4. Waiver for schools to serve meals at school sites during an Unanticipated School Closure. This waiver was approved March 16.
5. Waiver for sites operating a Child and Adult Care Food Program (CACFP) At-Risk for the enrichment activity requirement and to allow sites to serve meals in a non-congregate setting. This waiver has not been approved.
6. Under a waiver for meal service time flexibility, schools/districts under Seamless Summer Option (SSO)/ Summer Food Service Program (SSFP) are allowed to serve two meals at a time. Effective the weekend of March 21, 2020, the U.S. Department of Agriculture (USDA) has determined that Oklahoma School Food Authorities may distribute five days' worth of meals at a time – or 10 meals weekly per qualified student.

Participation in these options requires that sites be located in the attendance area of a school with a population of 50% or more students qualifying for free or reduced lunch. We have requested a waiver for this, as described in number 3 above, that has not yet been approved.

States in the Southwest Region, including Oklahoma, are seeking clarification on recently issued nationwide USDA waivers. New information will be forthcoming as it is available. If your SFA wishes to pursue continuation of food service during a school closure, please contact Child Nutrition Programs at the number above **as soon as possible**.

## ➤ FEDERAL GUIDELINES FOR STUDENT PRIVACY

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. See 20 U.S.C. § 1232g; 34 C.F.R. Part 99. The law applies to all educational agencies and institutions that receive funds under any program administered by the U.S. Secretary of Education. FERPA generally includes school districts and public schools at the elementary and secondary levels.

Under FERPA, a parent or eligible student (a student who is 18 years of age or older) must provide a signed and dated written consent before an educational agency or institution discloses Personally Identifiable Information (PII) from education records, unless an exception to this general consent requirement applies. *See* 34 C.F.R. § 99.30(a). There are some exceptions to the general consent requirement. *See* 20 U.S.C. §§ 1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j) and 34 C.F.R. § 99.31.

The term “education records” is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. *See* 20 U.S.C. § 1232g(a)(4); 34 C.F.R. § 99.3. Accordingly, immunization and other health records, as well as records on services provided to students under the Individuals with Disabilities Education Act (IDEA) that are directly related to a student and maintained by an educational agency or institution, are “education records” under FERPA.

The term “PII” refers to a student’s name or identification number, as well as other information that can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information. *See* 34 C.F.R. § 99.3.

### **Do parents and eligible students have to provide consent before an educational agency or institution discloses Personally Identifiable Information (PII) from education records?**

Generally, yes. A parent or eligible student must provide written consent before an educational agency or institution discloses PII from a student’s education records, unless one of the exceptions to FERPA’s general consent rule applies. *See* 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.

FERPA requires that a consent form be signed and dated by a parent or eligible student and (1) specify the records that may be disclosed; (2) state the purpose of the disclosure; and (3) identify the party or class of parties to whom the disclosure may be made. *See* 34 C.F.R. § 99.30(a) and (b).

### **How does the health or safety emergency exception to FERPA’s consent requirement permit an educational agency or institution to disclose PII from the education records of affected students?**

Although educational agencies and institutions can often address threats to the health or safety of students or other individuals in a manner that does not identify a particular student, FERPA permits educational agencies and institutions to disclose, without prior written consent, PII from student education records to appropriate parties ***in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of a student or other individuals.*** *See* 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.

This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception.

If public authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency in that community may determine that an emergency exists as well. Under the FERPA health or safety emergency exception, an educational agency is responsible for determining, on a case-by-case basis, whether to disclose PII from education records. The educational agency or institution may disclose the information without consent if it determines that there is an articulable and significant threat to the health or safety of the student or another individual and that certain

parties need the PII from education records to protect the health or safety of the student or another individual. This is primarily a local determination under which the USDE has stated that it will not substitute its judgment for that of the educational agency so that the educational agency may bring appropriate resources to bear on the situation, provided that, based on the information available at the time of the determination, there is a rational basis for such determination. Additionally, within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution 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 information was disclosed. *See* 34 C.F.R. § 99.32(a)(5).

**If an educational agency or institution learns that student(s) in attendance at the school are out sick due to COVID-19, may it disclose information about the student's illness under FERPA to other students and their parents in the school community without prior written parental or eligible student consent?**

It depends, but generally yes, but ***only if that information is in a non-personally identifiable form***. Specifically, the educational agency or institution must make a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information. *See* 34 C.F.R. § 99.31(b)(1). If an educational agency or institution discloses information about students in a non-personally identifiable form, then consent by the parents or eligible students is not needed under FERPA.

For example, if an educational agency or institution releases the fact that individuals are absent due to COVID-19 (but does not disclose their identities), this would generally not be considered personally identifiable to the absent students under FERPA as long as there are other individuals at the educational agency or institution who are absent for other reasons. However, educational agencies or institutions must ensure that in releasing such facts, they do so in a manner that does not disclose other information that, alone or in combination, would allow a reasonable person in the school community to identify the students who are absent due to COVID-19 with reasonable certainty.

**If an educational agency or institution determines that a health or safety emergency exists, may it disclose, without consent, PII from student education records to the media?**

No. As explained previously, FERPA only permits non-consensual disclosures of PII from students' education records under the health or safety emergency exception to "appropriate parties" (such as public health officials) whose knowledge of the information is necessary to protect the health or safety of students or other individuals. While the news media may have a role in alerting the community of an outbreak, they are not "appropriate parties" under FERPA's health or safety emergency exception because they generally do not have a role in protecting individual students or other individuals at the educational agency or institution. "Appropriate parties" in this context are normally parties who provide specific medical or safety attention, such as public health and law enforcement officials.

**May the school identify a particular student, a teacher or other school official as having COVID-19 to parents of other students in the school?**

In most cases, it is sufficient to report the fact that an individual in the school has been determined to have COVID-19, rather than specifically identifying the student who is infected. School notification is an effective method of informing parents and eligible students of an illness in the school. For settings in which parents are primarily doing drop-offs and pick-ups, posting signs on the doors may be effective. In other settings, sending home or emailing a notification may also be effective. These methods serve to notify parents and eligible students

of a potential risk, which may be particularly important for students who are more susceptible to infection or to developing severe complications from an infection, and to alert parents to look for symptoms in their own children and eligible students to more closely monitor themselves for symptoms.

There may be a rare situation during a health or safety emergency, however, in which schools may determine (in conjunction with health, law enforcement or other such officials) that parents of students or eligible students are appropriate parties to whom to disclose identifiable information about a student with COVID-19. In other words, school officials may determine that it is appropriate to disclose identifiable information about a student with COVID-19 to parents of other students if parents need to know this information to take appropriate action to protect the health or safety of their children.

For example, if a student with COVID-19 is a wrestler and has been in direct and close contact with other students who are on the team or who are in the school and have higher health risks, school officials may determine it necessary to disclose the identity of the diagnosed student to the parents of the other students. In these limited situations, parents and eligible students may need to be aware of this information to take appropriate precautions or other actions to ensure the health or safety of their child or themselves, especially if their child may have a higher risk of susceptibility to COVID-19 or of developing severe complications from COVID-19. School officials should make the determination on a case-by-case basis whether a disclosure of the student's name is absolutely necessary to protect the health or safety of students or other individuals or whether a general notice is sufficient. Consideration should be given to the needs of students or other individuals to have such information in order to take appropriate protective action(s) and the risks presented to the health or safety of such students or other individuals.

For more information on FERPA, please visit [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus).

### **Discrimination, Harassment and Bullying Related to COVID-19**

On March 4, 2020, the United States Department of Education, Office of Civil Rights, issued a [bulletin](#) concerning recent challenges that have been reported surrounding the coronavirus and discrimination, harassment and bullying. According to the CDC, “stigma and discrimination can occur when people associate an infectious disease, such as COVID-19, with a population or nationality, even though not everyone in that population or from that region is specially at risk for the disease.” In this climate, fear and anxiety surrounding COVID-19 can lead to stigma toward individuals based on their race, ethnicity, national origin, disability, etc. The OSDE encourages all educators and members of the public to recommit to raising awareness of factual public health information without fear or stigmatization. As education leaders working within our respective communities, we must ensure that harassment based on race or ethnicity is not tolerated.”

### **Questions?**

For program or department-specific questions, please contact the [relevant office directly](#). For legal questions, contact Brad Clark, General Counsel, at 405-521-4906 or Marley Billingsley, Legal Assistant, at 405-521-4889. Other questions may be directed to Annette Price, Constituent Services Specialist, at 405-521-6647.

