

NOTES FROM NEW YORK STATE SCHOOL BOARD ASSOCIATION (NYSSBA)  
WEBINAR DATED MARCH 28, 2020

Name of Webinar: "COVID 19 and its Effects on Schools Operations –  
What We Know and Don't Know Yet."

Moderator: Jay Worona  
Deputy Executive and General Counsel  
New York State School Boards Association (NYSSBA)

Presenters: Shannon Tahoe, NYS Interim Commissioner of Education  
Dan Fuller, NYS Deputy Secretary of Education

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TOPICS REVIEWED AND DISCUSSED

(1) School Closures

- Public and private schools in the New York are now closed through to April 15, 2020.
- The Governor to review possible extensions of schools on two (2) week intervals.
- It was acknowledged that the State could get to a point where school closures could extend for a greater period of time...but for now ...two (2) week intervals.

(2) Regents Exams

- It was acknowledged that this additional period of school closures does have an impact on how the State will be addressing the status of the State's Regents Exams.
- Now that this decision has been made to extend school closures across the state, the State Education Department, in consultation with the Board of Regents and other stakeholders will seek to make a decision on how to address these exams, hopefully this week.
- The State Ed Dept acknowledges that gaps in learning and equity issues as to how schools have either provided or had the opportunity to provide continuity of education to their students (i.e.: some districts can provide digital access, others not; some districts use pen and paper, some chrome books, etc.) have impacted how it will address this issue. Commissioner Tahoe acknowledged that the State had to be careful in its review of what it might be able to do.

(3) Graduations

- At the initial school closure plan was for a two (2) week closure period the decision of how to address the impact of the virus on graduations has not yet been addressed.
- As the State is now into a second two (2) week closure period, with the possibility of an even longer closure, the State Ed Dept will be working at looking at different options.

(4) 180 Day School Year

- The State will waive the 180 day school year requirement for those districts that closed school prior to the Governor's initial Executive Order IF either their individual County Health Departments closed them or there was a County Declaration of Emergency prior to the issuance of his order. Otherwise schools that closed on their own prior to March 18 will not get a waiver.
- Moving forward, the time period from March 18 through to April 1 the State Ed Dept will waive this time requirement. This waiver will now be extended through to April 15.
- For this second period of school closures (see: Executive Order 202.11), school districts MUST use any of their snow and vacation days that remain.
- In addition, school districts must continue to provide for a continuity of education for their students, as well as childcare and food service programs for their students.

(5) Tenure and CBA Issues

A. Questions Raised:

- Tenure decisions - try to avoid tenure by estoppel.
- APPR decisions – how do we look at the issue of seniority?
- 3020-a – filing prior to the prior to the end of a school year.
- Hourly employees – do we pay them?
- Transportation Contracts – to pay or not pay.

B. APPR/Tenure/3020-a

- The response is that the State Ed Dept is looking at each of these issues.
- The State recognizes that the APPR will be difficult now that the State has suspended certain tests, and that evaluations will be difficult. It further recognizes that many local CBAs have notification dates that have been or will be missed by the school closures.
- The intent of SED is to continue to review this issue and hope to have a response in the next couple of weeks. It will need to consult with the Board of Regents and stakeholders.
- It was acknowledged that as the APPR was derived as a legislative enactment it would require an executive order to override it.
- The same with Tenure decisions, as they as well are tied in with the APPR requirements.
- As for pursuing Section 3020-a charges, SED is also reviewing this issue. Any changes to the current requirements and timetables would also require an executive order.

(6) 2020 School Budgets

- It was acknowledged that this was another issue where a decision needed to be made soon.
- It was understood that school districts had board petition questions, publishing deadlines, and the like, all of which would also require an executive order to modify.
- At this time SED does not have a final decision but is working on the matter with the Board of Regents and its stakeholders.
- The fact that the Governor had already moved the Presidential Primary date to June was offered as a possible insight as to how the Governor's Office might approach this matter.

(7) Services to Students with Disabilities (SPED)

- It was noted that new federal guidance on issues related to providing services to students with special needs, 504 Plans, and IEPs had just come out.
- It was reaffirmed that by providing for a continuity of education to each school's general education students school districts continued to have a legal obligation to provide services to its SPED students.
- SED and the federal government are encouraging schools to look at alternative learning settings they provide to their general education students, and what changes they can make to provide services to SPED.
- The critical analysis that is being looked at is whether schools are making efforts and offering programs that get mandated services to their students "to the extent possible."
- Schools are being asked to look at all services that are being offered to students with IEPs.
- It was noted that the latest guidance document on this topic gets into the use of "tele-practice" as an alternate means to provide for the additional services required to meet SPED students' needs. Such tools are being encouraged as an alternate method of providing these services to the "extent possible."
- It is understood that the alternate services that can currently be provided at this time may not be at the same level or through the same mode of service they have traditionally been provided.
- SED does not expect IEPs to be amended to provide for these alternate methods of instruction and/or services, to include tele-practice.
- The CRITICAL factor that school districts are being told is that they MUST PROVIDE some additional level of support for their SPED students. Again, this is to the "extent possible" for the district.
- School districts and their staffs are strongly encouraged to document everything that they are doing for their students to both support what efforts they have made and to assess what the students' needs may be at a later date when traditional classes and services resume.

(8) Compulsory Education and SPED Students

- School districts were told that they need to consider the length of time a student with an IEP may be going without services provided for in their respective IEPs coupled with what services they are being provided.
- Each student's needs and educational program will be evaluated on a case by case basis.

- It is likely that that not every student’s educational program and a lack of services will necessarily negatively impact their educational needs just because they are not receiving certain of their IEP identified services at this time.
- The continuity of education remains the directive from the federal and state governments.
- At a future date it is anticipated that each student’s IEP and educational services will be evaluated and future needs assessed. At that time the impact of this crisis on each particular student will be made and decisions reached about future services made as a result.
- School districts were encouraged to reach out to parents during this time and review with them what educational programs and services can and will be provided to their children.

(9) April Board of Regents

- The Board will be reviewing with the Commissioner and stakeholders what flexibility that it can provide the department with respect to every regulation that governs its operations and programming.
- Ultimately all such decisions need to do what is right for the children we serve and what can be done to minimize the impact of current regulations and prospective changes may have on our students’ education.
- SED sought to ensure school districts, their administrations, their boards of education, and staff that they are doing the best they can under very trying circumstances.
- It was readily acknowledged that there will be difficulties.

(10) Data Privacy Issues Associated with Distance Learning

- The Commissioner sought to ensure students and their families that SED is not prepared to go backwards in its efforts to protect student privacy.
- FERPA and 2-D requirements must still be protected and maintained.
- School districts must be mindful and take steps to ensure compliance with the requirements.
- School districts were encouraged to work through their BOCES and their RICs to achieve compliance with these mandates, particularly as teachers and staff seek to find alternate methods and tools to educate their students.
- Schools should use the services provided by the BOCES and their RICs to ensure that any technology that is being used or which is proposed for usage is properly aligned to 2D.
- Teachers and staff must be told that they are to only use the tools that their school district has approved.
- It was recommended that it would be a good practice to have a policy in place where teachers and staff are instructed that they can only use technology that has been approved by the district.

(11) Distribution of School Medical Supplies, 3D Printers, and Other Such Materials to Local Health Care and Emergency Provider Services

- On behalf of their constituents School Boards questioned what SED’s and the Governor’s positions were as to school districts providing these supplies to the designated providers

and the State's assessment of how this conflicts with the State's Constitutional prohibitions on gifting and loaning public funds and materials.

- The presenters were asked if the Governor might be addressing this issue in a future executive order.
- In response, it was acknowledged that the Governor has in fact requested everyone who could to provide these items and materials to local health care providers and emergency service providers. With that said, it was acknowledged that the State and Country are in unprecedented times, and everyone is trying to do everything they can do to assist and address this crisis.
- The response was that they could not tell school districts to ignore the State Constitution.
- However, school districts were asked to do what they could within the parameters they felt they could work within.
- The redundant question posed to this question is who is going to fault a school district should they choose to honor this request and in fact provide such items and materials at this time.
- It was further stated that the State and local governments and emergency service providers are in a place where these supplies are desperately needed, and that is a school district has these materials and wishes to provide them to health care providers and emergency responder services they will take them.
- The presenters could not promise that there might not be legal issues in the future.
- With that, the responses provided concluded that they couldn't imagine anyone who would challenge a school district who donates medical supplies at this time.

(12) School Construction Projects

- This was another topic posed by NYSSBA to the presenters.
- The bottom-line question: can these projects go forward, particularly those which could readily be done in school buildings when students and staff are not present (i.e. boilers being fixed, window projects, etc.).
- Executive Order 202.8 was referenced, which required a 100% reduction of workforce by March 22. The question posed was whether school districts in some or all of these construction programs be exempt from this mandate.
- The response from the panel was that this issue required them to go back to the Governor's Office for further clarification.
- The panelist did not want to give out the wrong information. Once an answer was received NYSSBA would be notified.

(13) State Aide Reductions and School Budget Concerns

- The question posed to the panel was the statements that the Governor has made that the State does not have any money.
- More specifically, he has referenced a projected 10 to 15 billion dollar deficit as a result of this crisis, which has created a huge hole in state finances and expenditures.
- It was acknowledged in the question that education is one of the largest expenditures in the State's annual budget.

- It was understood that the State is looking to Washington for help, but that as of now this does not look promising.
- The ultimate question posed was what the State anticipates for school districts as they develop their own local school budgets.
- The response was that school districts should be aware that it was going to be a tough year going forward, and the new budget will not be a great year for school spending at the state level.
- On behalf of its constituents, NYSSBA asked the State to try to provide its schools an answer as soon as possible, no matter how distasteful that answer might be, that they know how to proceed at the local level.

(14) Title Funds

- The question posed to the panel was whether these monies could be carried over into the coming school year.
- The Commissioner stated that certain of these programs already allow school districts the opportunity to carry over these monies.
- SED is looking at the other programs to see if this might be allowed to occur.
- More information will be provided to school districts as it becomes available.

(15) Transportation Contracts

- In response to an earlier question as to what school districts should do to address and/or pay for transportation contracts which are going unused, it was noted that some schools are paying for these and others are not.
- School districts were encouraged to be creative where possible to address this issue.
- It was noted that some districts are using their bus drivers to deliver food and packets to school district students.
- The final response was that the State has no clear answer to this question at this time.