

**\*\*Updated Tuesday, March 17 at \_\_:\_\_ pm.**

**During the COVID-19 public health emergency, our public schools have a significant leadership role to play. Every member of your school district (trustees, administrators, certified and classified staff alike) will be critical in providing community leadership in meeting the needs of your families and students during this crisis. It is vital that school leaders communicate effectively and frequently with your community, staff, parents and students to keep them informed about measures your district is taking to minimize the impact during this time of great uncertainty.**

MT-PEC has developed this FAQ to provide answers and best practices to many of the questions our public schools have at this time. We will update this FAQ as frequently as necessary to continue providing Montana's public schools with information to assist you through this challenging time.

## **FREQUENTLY ASKED QUESTIONS**

### **District Emergency Declaration**

- 1. Question:** What does my district need to consider given the confusion surrounding the Governor's order.

**Answer:** The Governor created some ambiguity regarding whether schools are to be funded during this two week closure with his comments during [Monday's] press conference. We hope to see that ambiguity resolved favorably and in short order. If, however, the Governor does not resolve that ambiguity, or worse, declares that the days will have to be made up to avoid funding reductions, we need to be prepared. There are some key actions that elected boards can take now that will take the sting out of the potential funding loss for this two-week closure. Each board should strongly consider:

1. Immediately convening (electronically is fine under 2-2-302, MCA; notice not required under the law, 20-3-322, MCA) to declare its own unforeseen emergency. This action alone will ensure that your district is not double penalized for shortfalls in aggregate hours of instruction. It will also buy you one day of school closure free of any penalty.
2. Convening soon (electronically is fine under 2-2-302, notice must be provided) and authorizing/directing your leadership team to work with teaching staff on identifying your students who are proficient in the near future and definitely prior to the end of the school year.

The two actions above will, if performed in each school district in the state, save schools millions of dollars in state revenue that would otherwise be lost if the Governor does not waive penalties. How it works:

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1. The state's funding of school district general fund budgets comes up to approximately \$4.4 million for each 6-hour day (1080 aggregate hours divided by 180 days).
2. Ten days total comes up to \$44 million. However, there is a double penalty under 20-1-301 for each hour short of the minimum aggregate hours. So, a loss of 10 days of aggregate hours of instruction without a declaration/authorization of proficiency and without a board's declaration of an unforeseen emergency will cost schools \$88 million in state aid.

The cost of inaction on a statewide basis then is \$88 million in state aid. If, on the other hand, all school boards statewide (1), convene immediately and declare their own unforeseen emergency and (2), authorize your staff to identify proficiency levels, we can reduce the funding loss of \$88 million down to \$10.5 million, saving schools \$77.5 million that would otherwise be in jeopardy. This is based on an underlying assumption that proficiency rates largely mirror the statewide graduation rate of 86.6%. Additionally, if offsite instruction is provided during this closure to those who are not proficient, there will be no funding loss at all.

We know that the uncertainty of whether the Governor will waive the penalties for the lost instruction time is unnerving. We can, however, take productive action to protect our schools' funding regardless of whether the Governor acts.

In Summary:

- No Action - \$88 million funding reduction if lost days are not made up at the end of the school year.
- Proficiency and Unforeseen Emergency Declaration by School Board - Reduce Funding Loss to \$10.5 million
- Proficiency, Unforeseen Emergency and Limited Offsite Instruction to Those not Proficient - No funding loss

**2. Question:** Does my Board have to declare an emergency sometime during the two week closure to avoid the penalty?

**Answer:** Unfortunately, [20-9-805](#) says districts receive a proportional reduction (as opposed to a 2x penalty under [20-1-301](#)) in funding for any hours short "that a school district fails to conduct by reason of one or more unforeseen emergencies."

**3. Question:** What should the agenda item and action be listed as for declaration of unforeseen emergency?

**Answer:**

**Action Item:** Board consideration of current circumstances related to COVID-19 for possible declaration of unforeseen emergency pursuant to 20-9-801 through 20-9-806, MCA.

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**Note:** 20-3-322(3) provides: (3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the ***48-hour notice is waived in an unforeseen emergency.***

**Note:** 2-2-302 provides: Meeting defined. As used in this part, "meeting" means the ***convening of a quorum*** of the constituent membership of a public agency or association described in 2-3-203, whether corporal or ***by means of electronic equipment***, to hear, discuss, or ***act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.***

**4. Question:** What should a motion include to utilize [20-9-311 4\(d\)](#) allowing my district to identify students who are proficient and provide offsite instruction to those students who are not proficient?

**Answer:** Assuming that the board does not believe it has already delegated these powers (for offsite instruction, proficiency declarations) to its administration, it should pass motions as follows:

**Proficiency:** The superintendent is authorized to work with district staff in making determinations regarding pupils who are proficient in courses in which the pupils are enrolled without regard to the aggregate hours of instruction provided. The superintendent is directed to make a final determination of proficiency for each pupil for each enrolled course, using district assessments, including class grades at a minimum, and reporting a full-time equivalent conversion of ANB for such pupils, based on the scheduled time ordinarily provided through the aggregate hours of instruction for such courses.

**Offsite Instruction:** The superintendent is authorized to work with district staff in providing instruction for pupils of the district. Such instruction may include any method or methods identified as appropriate by the superintendent, including but not limited to offsite instruction as defined and referenced in sections 20-1-101(5); 20-1-101(14); 20-7-118; and 20-9-311(11), MCA.

## **Staffing**

**1. Question:** With the Governor's closure order, are staff still allowed to work on providing instruction to students?

**Answer:** The Governor's order does not require you to stop the work of your staff, only to close schools. The Governor's order specifically contemplates that work will go on as school districts plan for how to adjust and ensure that the needs of students are met. You have both the resources and the freedom to have your staff work on offsite instruction resources and methods. To the extent that you have changes in working conditions, be sure to collaborate with the union and document their concurrence in any

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changes in working conditions through an MOU. **You can review Helena Public School's MOU as a model [here](#).**

**2. Question:** Should district employees stay home or report to work?

**Answer:** The purpose of social distancing is to reduce gatherings of people and/or distance between individuals. Districts should allow staff over age 60 or with immunocompromised health work from home when available. All other staff will play a critical leadership role in ensuring community services, including delivering meals to students, providing offsite instruction and cleaning the school buildings. The flexibility on determining work schedules remains with the district. You should seek the cooperation of the union, as you have obligations to bargain any changes in working conditions.

It is important to understand that the Governor's proclamation closed schools for the next two weeks. However, the closure did not mean that school employees are excused from work during this time. MPFE is urging their members to report to work as directed by their local public schools as there is much to be done to provide for students and families during this time. As noted above, Montana schools will need to continue to work with state and national efforts to assure that meals are provided to families, that students have learning opportunities as may be made available – both immediately and in weeks to come, and that as critical community entities, schools are doing what they can to assist community efforts around the state.

Staff who are experiencing cold and/or flu symptoms should be instructed to exercise self-isolation and social distancing to minimize the spread/exposure of others to this virus.

**3. Question:** My district has a classified collective bargaining agreement. Does the CBA still rule for leaves, pay, etc. Some classified staff will be required to work (custodians, maintenance, etc.) but others won't. Do we need to bargain change in working conditions?

**Answer:** The CBA governs and any change in working conditions must be bargained. Consider repurposing duties, such as for a deep cleaning, delivery of meals, etc. With no loss of funding, you should have some flexibility. Wherever possible, all staff should continue to be paid and additional paid sick or administrative leave should be provided for those individuals under quarantine, sick due to COVID-19, or unable to work because of the need to take care of dependent children that are home because of school closure.

**4. Question:** My district's classified staff are not collectively bargained. What is being recommend as a best practice in reference to these types of employees?

**Answer:** A District has wide latitude in reference to classified employees who are not collectively bargained. However, the District should be thinking about all of the tasks and duties that need to be performed to assist with school and bus sanitation measures,

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providing continued learning opportunities for students (if your district is educating students through on-line instruction) and providing meals to your students. In summary, districts can continue to pay and utilize classified staff during the Governor's two week public school closure.

## **Funding**

### **1. Question: Will schools still receive funding during the Governor's school closure?**

**Answer:** The Governor's order says schools will receive full funding. The Governor has the authority to waive the penalties that would otherwise accrue for failure to meet the minimum aggregate hours of instruction.

10-3-104. General authority of governor. (2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

### **2. Question: Will schools be reimbursed for busing in the Transportation Fund?**

**Answer:** The Governor's press release says "Schools will continue to receive all state funding during this two-week closure." Schools will be provided all state funding during the period of closure, including all general fund payments as well as the state transportation reimbursement.

## **Board of Trustees Meetings**

### **1. Question: Can our school board convene electronically?**

**Answer:** The board can convene electronically but it has to be concurrent, such as a conference call or video conference. The definition of a meeting in [2-3-202](#) includes the convening of a quorum by electronic means.

If you are convening the meeting because of an unforeseen emergency, advance notice requirements under [20-3-322](#) do not apply. You can call the meeting on little or no notice, though we recommend you provide as much notice as you can under the circumstances.

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- 2. Question:** How does a Board comply with the right of the public to participate in Board Meetings during public comment (on non-agenda items) or before the Board makes a decision if the meeting is held electronically?

**Answer:** Boards can satisfy the right of participation by providing a call-in number to your community. We do not recommend that you limit the number of people who could attend an in person meeting of the board unless the county health department implements a gathering limit of general applicability.

- 3. Question:** Can the school board convene a meeting without compliance with the 48-hour notice requirements for special meetings?

**Answer:** If you are convening school board meetings because of an unforeseen emergency, advance notice requirements under [20-3-322](#) do not apply. You can call the meeting on little or no notice, though we recommend you provide as much notice as you can under the circumstances.

### **Student Meals**

- 1. Question:** Can schools continue to offer meals to students?

**Answer:** The USDA has issued a waiver to Montana and will provide flexibility to allow schools to continue providing schools meals during school closures. Schools can utilize staff to provide and deliver meals to students. You can read more about [the wavier here](#).

- 2. Question:** My district is not eligible for the SFSP. What are our options?

**Answer:** If your district is not eligible for the SFSP, some options include:

1. Work with nearby eligible towns with eligible schools as open SFSP sites are for any children under 18, it does not matter where they are enrolled.
2. Contact Lisa Lee at No Kid Hungry who is working on assisting communities who are ineligible find additional community resources. Her number is (406) 444-3518.
3. Serve meals during the closure, even if not eligible for any federal funding through SFSP. This is considered non-program food as it is not part of a federal child nutrition program. It is similar to catering and the funds will have to be put back into the nonprofit school food service account.

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## **Academics**

- 1. Question:** Are schools still required to meet all of the IEP requirements of students who qualify under IDEA?

**Answer:** If a district closes the schools entirely and provide no educational services to your general student population, you will also be relieved of the obligation to provide education to IDEA qualified students (not that we recommend this course of action). The [U.S. Department of Ed FAX](#) on this topic should help you figure out your obligations. It is likely you will continue to provide at least some educational services, and as such you will be continually obligated to provide education services to IDEA qualified.

- 2. Question:** Are we able to have special education students come to the school for instruction, especially in an instance where the student has a 1:1 para or 2:1 para?

**Answer:** Not under the Governor's order. Schools are closed for purposes of instructing students for the next two weeks. Alternative arrangements will have to be made if you continue to provide educational services during the next two weeks.

- 3. Question:** If the closure extends beyond two weeks, are we able to be creative on ways such as having first responders/medical workers have the option to bring their kids to school still, or could we have a rotating schedule where a few kids attend each day to pick up school work and get some 1:1 instruction?

**Answer:** Districts have wide latitude regarding the methods and timing of instruction under the law. If the current Governor's order were extended beyond 2 weeks, there is no option for onsite instruction. If the Governor's order lapses, however, and you are operating on your own order, then between offsite options and proficiency-based learning, you could do what you have identified above and much more. Review guidance on [Alternatives for Ensuring Educational Continuity here](#).

You can find additional online resources here:

- [Free Online Video Conferencing Options](#)
- [MT-PEC Academic Resource Guide for Offsite Student Learning](#)
- [Online Resources for Teachers](#)
- [Education Policy and Practice Digital Learning & COVID-19](#)
- [META Community Forum Notes - Preparing for School Closure - Remote Learning](#)
- [MOU COVID-19 Response Example](#)