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August 2020

**TO:** School District Superintendents  
School District State Aid Designees  
BOCES District Superintendents

**FROM:** Brian S. Cechnicki, Director of Education Finance *B. Cechnicki*

**RE:** 180-Day Requirement Compliance in the 2019-20 School Year

This memorandum provides additional information to school district officials about changes to the minimum instructional time requirement pursuant to Chapter 605 of the Laws of 2019, Chapter 107 of the Laws of 2020, and Commissioner's Regulations §175.5, including instructions for reporting days and minimum instructional hours for the 2019-20 school year to the Office of State Aid.

**Session Day Waivers Pursuant to Education Law §3604 as amended by Chapter 605 of the Laws of 2019 (Emergency Closures Prior to the COVID-19 Closures)**

**“Extraordinary Condition” Day Waivers (SAMS Schedule A-8)**

Prior to the 2019-20 school year, no special consideration was given to days of session that a school or school district was closed due to a state- or locally-declared state of emergency. Such days followed the district's regular snow day protocol and was subject to the 180-day minimum. Pursuant to Education Law §3604(7), the commissioner may provide a waiver of up to five days if one or more schools of the district were not in session for 180 days because of:

- extraordinarily adverse weather conditions;
- impairment of heating facilities;
- insufficiency of water supply;
- shortage of fuel, lack of electricity;
- natural gas leakage;
- unacceptable levels of chemical substances;
- a credible threat to student safety as reasonably determined by a lead school official; or
- the destruction of a school building either in whole or in part;

provided that the district could not make up the days by using (1) for the secondary grades all scheduled vacation days which occur prior to the first scheduled regents examination day in June, and (2) for the elementary grades all scheduled vacation days which occur prior to the last scheduled Regents examination day in June.

**New Waiver Provision Under Chapter 605 of the Laws of 2019**

Pursuant to Chapter 605, for days of session that were cancelled due to a properly executive state- or locally-declared state of emergency other than COVID-19, districts may receive a waiver from the 180-day and minimum instructional hour requirement for session days. The following sections detail the designation criteria for such states of emergency.

## Events Considered to be a State of Emergency

### Local Emergencies

The chief executive of any county, city, town, or village may issue a local state of emergency declaration “in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby, such chief executive may proclaim a local state of emergency within any part or all of the territorial limits of such local government” (Executive Law §24(1)).

Such declarations may cover multiple situations, but the most likely contingencies that will impact the ability of schools to remain open are likely to be declarations that

- Establish a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel;
- Designate specific zones within which the occupancy and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;
- Regulate and close places of amusement and assembly; and
- Prohibit and control of the presence of persons on public streets and places.

Only the chief executive of the appropriate municipality may issue a declaration. Only formally issued declarations by the chief executive will be considered eligible for the instructional requirement waiver under this guidance.

### State Emergencies

The governor, of his or her own volition and/or at the request of municipal chief executives, may also issue a state declaration of disaster emergency, following the same procedures as outlined above for local emergencies.

*Schools that close for the above reasons may still claim the session day and instructional hours that had previously been scheduled prior to the declaration of the emergency, consistent with the procedure outlined below.*

## School District and State Education Department Confirmation of Properly Executed Declarations

In order to facilitate the validation of properly executed states of emergency under Article 2-B of the Executive Law, the State Education Department will undertake the following procedures:

- **State-level Declarations:** When reporting a non-COVID-19 closure based on a state-level declaration, SED will independently confirm all states of emergency issued by the Governor.
- **County-level Declarations:** SED will also independently confirm all states of emergency declarations issued by the chief executive of the counties.
- **City, Town, and Village Declarations:** If a local declaration is issued by the city, town, or village in which the school district is located, the school district must receive a written confirmation from such chief executive, and report the day and supporting documentation

to their BOCES District Superintendent (non-component districts will report directly to the Office of State Aid).

### **Determinations of Local Declaration Jurisdictions**

School districts that have overlapping boundaries with multiple counties, cities, towns, or villages may close a school, multiple schools, or the whole district if states of emergency have been declared in some, but not all of the overlapping municipalities. Such closures, even in the parts of the school district not covered by the state of emergency, may be claimed under this waiver provision.

### **Reporting Properly Declared States of Emergency to the Office of State Aid**

As detailed in a memorandum on March 6, 2020<sup>1</sup>, school districts must report the closure of any school building to the Department. Such notification procedure will continue beyond the end of the COVID-19 crisis.

In reporting calendars and session days impacted by non-COVID-19 states of emergency, school districts must use the following procedure:

- **For the calendar spreadsheet (Column J):** enter “State Emergency”, “County Emergency”, or “Local Emergency” in the “Notes” column of the model calendar spreadsheet. The hour calculation for that day may be maintained as if the day occurred as previously schedule (e.g. a previously scheduled half day may only be reported as a half day, etc.). For “Local Emergency” entries, verify that you have supporting documentation confirming the emergency declaration available for additional submission to the Office of State Aid.
- **For reporting in SAMS (Schedule A-8):** the application for both **non-COVID-19** state of emergency declaration days and **non-COVID-19** extraordinary condition days in the 2019-20 school year will be made via the 2020-21 SAMS Schedule A-8 in September 2020. Further information on this form will be available when 2020-21 SAMS is opened.

### **COVID-19 Session Day Waivers for the 2019-20 School Year (Pursuant to Chapter 107 of the Laws of 2020)**

Chapter 107 of the Laws of 2020 waives the foundation aid penalty for any day or days in the 2019-20 school year on which session had been previously scheduled but the chancellor of the city school district of the city of New York or the superintendent of a district closed the school or schools due to a determination by the chancellor or superintendent that it was in the best interest of public health or safety of the school district to close the school or schools in response to the novel coronavirus, COVID-19.

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<sup>1</sup> Available here: <http://www.nysed.gov/common/nysed/files/programs/coronavirus/nysed-covid-19-notification-school-building-closure.pdf>

## **Reporting COVID-19-Related Closures to the Office of State Aid**

In reporting calendars and session days impacted by COVID-19-related Executive Orders, school districts must use the following procedure:

- **For the calendar spreadsheet (Column J):** For each day the school and/or district was closed due to COVID-19 in the 2019-20 school year, enter “COVID-19 Closure” in the “Notes” column of the model calendar spreadsheet. The hour calculation for that day may be maintained as if the day occurred as previously scheduled (e.g. a previously scheduled half day may only be reported as a half day, etc.), provided that the calculation for June Regents examination days no longer applies as the exams were cancelled. If a COVID-19 closure session day applied on a previously scheduled Regents examination day, choose the appropriate selection in the notes column.
- **For reporting in SAMS (Schedules A-2 and A-4):** For each day during the COVID-19 closures beginning in March 2020, during which time remote continuity of learning was provided, school districts should use the average daily aggregate attendance counts from the preceding days of the school year from September 2019 through March 2020.

## **COVID-19 Minimum Instructional Time Waivers**

For the 2019-20 and 2020-21 school years, school districts may apply for a waiver from the minimum instructional hour requirement if, as a result of an Executive Order(s) of the Governor pursuant to the State of emergency declared for the COVID-19 crisis, or pursuant to Education Law 11 §3604(8), as amended by Chapter 107 of the Laws of 2020, or reopening procedures implemented as a result of the COVID-19 crisis, the district is unable to meet the requirement in either or both school years.

School districts seeking a waiver from the minimum instructional hour requirement pursuant to Commissioner's Regulation §175.5(1) must complete two questions.

Waiver applications will be for the 2019-20 and 2020-21 school years only. Waiver approval is contingent on the following conditions:

- Does the Superintendent request a waiver from the minimal instructional hour requirement pursuant to Commissioner's Regulations §175.5 for the 2019-20 and 2020-21 school years? [Yes; No; N/A - Both 2019-20 and 2020-21 already covered by 2019 Approved Waiver]
- Describe the challenge that prevented the school district from complying with the minimum instructional hour requirement in the 2019-20 school year and the anticipated challenges in the 2020-21 school year (maximum of 2,000 characters).