

## COVID-19 Superintendent Call

March 20, 2020

The following are questions asked by directors during one-on-one outreach prior to the call and during the call and the answers provided by the Department.

### Educators

- How should schools handle teacher evaluations that are still in progress? Do schools have to complete second semester teacher observations/evaluations?
  - **RESPONSE:** The TDOE is actively working to provide a guidance document that reflects the changes in the teacher evaluation system based on the passage of HB 2818/ SB 2672. Please submit any teacher evaluation related questions to [David.Donaldson@tn.gov](mailto:David.Donaldson@tn.gov) to add to the FAQ guidance document.

### Academics

- If school districts use instructional resources provided by the Department, should those resources be used to produce student grades? Should attendance be taken, or is the Department recommending that the educational resources be optional and only provided for parents to use at their own discretion?
  - **RESPONSE:** It is important that all students have equal access to educational resources if the resources are mandatory and utilized by a school district for student grading. The state board of education (SBE) rules address local school district attendance, grading, promotion, and retention policies. Additionally, the SBE rules set course and graduation requirements. In response to the passage of HB 2818/SB2672, the SBE is scheduling a special called meeting in April to promulgate rules to implement the new law. Such rules will address the issues referenced above. The Department will provide guidance on these rules once the SBE passes them.
- How should school districts distribute hard copies of educational resources considering the government prohibition on gatherings of more than 10 people? How do school districts support continuous learning where students do not have internet and do not have parents who will either pick up the paper packets or hold students accountable for getting work done at home?
  - **RESPONSE:** The Department has compiled a [school closure toolkit](#) on academics and instruction that provides guidance and resources for addressing these types of concerns in the short term. The Department is working to develop more robust plans for continuity of instruction for longer-term closures.

- School districts are working to keep children engaged with learning by whatever means possible. Can you say more about the Department’s planned online resources?
  - **RESPONSE:** The Department’s school closure [toolkit for Academics](#) and instruction provides a starting point for districts in terms of both print and online resources. The Department will be exploring additional options for a long-term plan for instructional continuity.

### School Closures, Instructional Day Requirements, and Waivers

- When will school districts know if Governor Lee will extend closings and for how long will school districts be asked or required to close?
  - **RESPONSE:** At this time, there have been varying return dates reported by school districts across the state. It is too early to predict what is necessary to keep schools and communities safe. However, the Department is committed to providing direction to superintendents no later than Friday, March 27<sup>th</sup> regarding potential extension of the recommendation for school closures.
- Do school districts have to submit a waiver request now?
  - **RESPONSE:** Pursuant to HB 2818/SB2672 that passed late last week, the Commissioner will be granting a blanket waiver for all instructional days missed due to COVID-19 and the tornado and severe weather that impacted middle Tennessee on March 3. If school districts choose to use any stockpile days they have left for closures due to COVID-19 or the tornado, they should simply update district calendars in EIS in the same way they document the use of a stockpile day for inclement weather. For school days missed due to COVID-19 after stockpile days are exhausted, please code each missed instructional day in EIS as “waiver” until schools re-open. Once schools reopen, submit one waiver notification that includes all days missed due to COVID-19 or tornado. For more information, see [this FAQ document on school closure](#).

### Continuity of Instruction Plans (CIPs)

- Are school districts required to submit a CIP for TDOE approval and if so, what kind of detail is the Commissioner looking for with school district CIPs? If school districts ask teachers to provide resources and make objective-based modules available to students throughout the closure, but there is no expectation of holding students accountable for completing them, they are ungraded, and "attendance" is not taken, does that still require the submission of a CIP?
  - **RESPONSE:** Pursuant to HB 2818/SB2672 that passed late last week, the Commissioner will be granting a blanket waiver for all instructional days missed due to COVID-19 and the tornado and severe weather that impacted middle Tennessee on March 3. There is no requirement to submit a CIP for those days to be waived. The TDOE is working to develop more robust best

practice guidance for CIPs for longer-term closures. School districts can find additional guidance on this topic on the TDOE website in the [toolkit for Academics](#).

### Students with IEPs

- For IEP meetings, can districts mandate that parents and/or their children come in person to the school to ensure districts stay within compliance with IDEA?
  - **RESPONSE:** The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. LEAs should make every attempt to conduct annual IEP team meetings during periods of school closure. However, IEP Teams are not required to meet in person while schools are closed. If there is a need to an IEP meeting, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. Further, if changes need to be made to the IEP, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. IEP team meeting timelines may be extended only if: 1) The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or 2) Information necessary for the IEP team's deliberation is not attainable due to recommendations of the state or local health departments.
  - For more information, refer to this [toolkit for supporting special populations during school closure](#) on TDOE's website.
- What guidance is there related to legal compliance with IDEA when it comes to providing instruction for all students?
  - **RESPONSE:** On March 21, 2020, the U.S. Department of Education (DOE) released additional [guidance](#) regarding serving students with disabilities. The guidance stated that while many schools are choosing to move to virtual instruction, some educators have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. DOE states that this is simply not true. Schools should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make

local decisions that take into consideration the health, safety, and well-being of all their students and staff. **To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.** The Department is prepared to help school districts provide virtual instruction in a manner that is accessible to all students. For more information, refer to this [toolkit for supporting special populations during school closure](#) on TDOE's website.

### Graduation, Credits and Credit Recovery

- What should districts do for student report card grades?
  - **RESPONSE:** The SBE rules address local school district attendance, grading, promotion, and retention policies. Additionally, the SBE rules set course and graduation requirements. In response to the passage of HB 2818/SB2672, the SBE is scheduling a special called meeting in April to promulgate rules to implement the new law. Such rules will address the issues referenced above. The Department will provide guidance on these rules once the SBE passes them.
- Can you provide an update related to pass/fail grades for high school credit classes vs. numeric grades?
  - **RESPONSE:** The state board of education (SBE) rules address local school district attendance, grading, promotion, and retention policies. Additionally, the SBE rules set course and graduation requirements. In response to the passage of HB 2818/SB2672, the SBE is scheduling a special called meeting in April to promulgate rules to implement the new law. Such rules will address the issues referenced above. The Department will provide guidance on these rules once the SBE passes them.

### Graduation Requirements

- What happens if districts lose the 4th quarter?
  - **RESPONSE:** The SBE determines graduation requirements. At this point, districts should work to allow students to graduate without summative assessments, including the required college entrance exam (ACT/SAT). The SBE rules address local school district attendance, grading, promotion, and retention policies. Additionally, the SBE rules set course and graduation requirements. In response to the passage of HB 2818/SB2672, the SBE is scheduling a special called meeting in April to promulgate rules to implement the new law. Such rules will address the issues referenced above. The TDOE will provide guidance on these new rules once the SBE passes them. For more information, refer to the forthcoming FAQ document regarding assessment and accountability on the TDOE website.

- How will seniors graduate if there is no 4th quarter?
  - See response above.
- If districts let a senior graduate and they do not take certain courses, will THEC allow them to come into their university without doing remediation, etc.?
  - See response above.
- Does the Department anticipate altering the high school graduation requirements (presumably w/ the SBE) or allow district to give students credit for classes based on the reduced instruction this semester? If the former, does that mean that underclass cohorts for the next few years will have altered graduation requirements as well?
  - See response above.

### Credit Recovery

- Will the Department alter the guidance on credit recovery, including the monitoring requirement?
  - **RESPONSE:** According to Tennessee State Board of Education High School Policy 2.103 in 7b, “Local boards of education shall develop credit recovery program rules, regulations, and processes. These policies shall be formally adopted by the local board of education...” Additionally, in 7c iii guidance is provided for local boards to set requirements including, but not limited to, attendance, discipline, availability of coursework, availability of space, appropriate progress, and grades.
- What guidance do you have for students who would need credit recovery to be promoted or graduate?
  - See response above.

### Accountability and Assessment

- It appears that HB 2818 will no longer require students to take a postsecondary readiness examination. School districts know that postsecondary readiness will be most important well after the COVID19 threat. Can you provide an update on opportunities for juniors to take the ACT going forward?
  - **RESPONSE:** The Department is currently working with ACT to explore possible options, including the current planned state testing date of April 21. The Department will communicate more information in the coming weeks. At this time, the Department is working with ACT and anticipate offering additional testing dates. At a minimum, juniors who are not able to test later this spring or summer will be able to utilize the October Senior Retake day. This option will be available for students who successfully tested in the spring or summer and students that will be testing for the first time in the fall. For more information, refer to the forthcoming FAQ document regarding assessment and accountability on the TDOE website.

## Finance

- Suggestion: Thinking about BEP for next year, I suggest using month 6 numbers for month 7.
  - **RESPONSE:** The suggestion is appreciated. The General Assembly passed legislation this week (HB 2818/SB2672) that will ensure districts experience no adverse fiscal actions on state funding allocations. The TDOE will continue to work with partners and oversight entities to determine the appropriate adjustments to ensure this intent is fully met.
- Can you say more about the revisions made to the FY 2021 budget?
  - **RESPONSE:** The budget that the Governor proposed directs funds into relief for tornado and COVID-19 related programs. Please note, however, that the budget will be reviewed again by the legislature in the summer. For more information, please see the Department's [Finance School Funding in Event of a School Closure FAQ](#).
- What can the Department say about next year's budget?
  - **RESPONSE:** The General Assembly passed the budget this week, emphasizing response needs to the COVID-19 pandemic and tornado responses. An overview may be accessed [here](#). Please note, however, that the budget will be reviewed again by the legislature in the summer. For more information on district funding guidance, please see the Department's [Finance School Funding in Event of a School Closure FAQ](#).
- Will there be a cut to this year's BEP funding?
  - **RESPONSE:** There will be no cuts to BEP funding. Funding is based on prior year data, and payments will continue as scheduled. Please note that, if needed, the calculation for BEP payments may be adjusted depending on the length of closures. For more information, please see the Department's [Finance School Funding in Event of a School Closure FAQ](#).
- How can districts pay hourly staff if all stockpile days are exhausted?
  - **RESPONSE:** This is a local decision and ultimately up to the local school board.
- School districts do not receive BEP funds from the state in May or July. Is there a way to advance some BEP funds during the month of July for the '20-'21 school year to districts who have a low fund balance and need the cash for summer salaries, opening-the-school-year monies (schools start at the end of July), etc.? The reason for that is districts anticipate sales tax collections to drop, and it will hurt a district's cash flow.
  - **RESPONSE:** Right now, there is no mechanism in place to do that, but the TDOE will examine this option. As a reminder, district's 3% fund balances may be used in these cases to support fiscal needs. For more information, please see the Department's [Finance School Funding in Event of a School Closure FAQ](#).

- How will school closures affect teacher pay?

**RESPONSE:** Personnel plans for teachers should comply with T.C.A. § 49-5-716, which states:

*A teacher, including a teacher on preapproved leave or other type of leave, shall not be charged with a day of leave for any day on which the teacher's school or the school district is closed due to natural disaster, inclement weather, serious outbreak of contagious illness, or other unexpected event.*

## Technology

### Internet and device access

- What guidance does the Department have around the lack of internet access for students/families?
  - **RESPONSE:**
  - Wireless Options
    - Verizon Wireless: Verizon Wireless is currently under state contract, and devices are \$0 cost. Service is \$35/month for high utilization and \$24/month for low utilization.
    - T-Mobile: There is currently a \$0 cost for devices and a \$35/month per user for unlimited bandwidth.
    - Comcast: Comcast currently has a program for low-income families to obtain internet service. This service is normally \$10/month (Internet Essentials program). However, under COVID guidelines, Comcast is waiving the cost for two (2) months. This does not provide super high-speed internet, but does provide basic access. Information related to this is provided below.
  - Device Options
    - The TDOE is currently working with Dell, Microsoft, and SHI as a reseller to provide low-cost options across manufacturers.
    - Comcast also has devices under their Internet Essentials program. More information can be found at: <https://corporate.comcast.com/press/releases/internet-essentials-low-income-broadbandcoronavirus-pandemic>.
    - The average cost for devices will be between \$100- \$149 per device.
    - Options for lease are limited due to financing conditions and no guarantee on equipment quality on return.
  - Refer to the [FAQ on IT Resources](#) for more information.
- Continuing to meet instructional goals during a long-term closure will be very difficult for rural districts. Technology equipment and reliable internet services are not available to many students. What guidance does the Department have around these issues?
  - See above response.

- Will it be required to pay for additional filtering for devices if they are sent home (about \$7 per student).
  - **RESPONSE:** To continue to provide students with proper internet controls and follow CIPA requirements, filtering controls would still be necessary. Two options include:
    - Utilize free products deployed through mobile device management for endpoint content filtering (e.g.: Cisco Umbrella is currently being offered for free).
    - Use existing VPN access into the school system to leverage controls already in place.
    - The TDOE will continue to explore additional supports in this area.
- Please provide more information related to efforts regarding collaborating with cell phone providers to open up hot spots for internet access. The free 2 months require a credit card to be charged at the end of the 2 months, which some families may not be able to provide.
  - **RESPONSE:** The TDOE has been in contact with all major internet providers to determine potential options for districts, schools, and families and will continue to update the [FAQ on IT Resources](#) with more information as available.

## Staffing

- Can school districts pay non-licensed employees even if they do not require them to work?
  - **RESPONSE:** The Tennessee Department of Education (TDOE) stands ready to support all school districts during the COVID-19 pandemic. Because local school board policy and unique facts make dramatic differences in analyzing any situation, the TDOE advises each school district to consult with the local school board attorney for specific legal advice regarding employment matters during the COVID-19 pandemic.

The TDOE has received many questions regarding school district staffing decisions during school closures due to COVID-19. Although the TDOE has some regulatory authority over local school districts with regard to certain issues, it is a common misconception that the TDOE has supervisory or administrative control over all local school district operations.

Pursuant to T.C.A § 49-2-203, a local board of education has the authority to "manage and control all public schools established or that may be established under its jurisdiction." Also, T.C.A. § 49-2-301, states specifically that, each local board of education is authorized to employ a director of schools." Local school district employees, including teachers, principals, and non-licensed employees are hired by the local director of schools. Therefore,

only the director of schools and the local board of education, through local board policies, may address personnel matters such as staffing decisions during school closures.

The top priority for school districts during the COVID-19 pandemic is to continue serving their communities while keeping students, staff, and their families safe. To do this, the TDOE recommends that every school district work with their local board attorney to develop a school personnel plan for the school closure that includes procedures for both teachers and non-licensed employees.

The plan should address whether non-licensed employees are laid off, redeployed to perform other critical work during the school closure, or paid without being required to work.

The plan should also specify if teachers and other licensed employees are required to transition their work in the traditional classroom setting to work supporting continuity of instruction plans that provide students educational services in non-traditional ways, including through online platforms and other methods of distance learning. The plan for teachers should comply with T.C.A. § 49-5-716, which states:

*A teacher, including a teacher on preapproved leave or other type of leave, shall not be charged with a day of leave for any day on which the teacher's school or the school district is closed due to natural disaster, inclement weather, serious outbreak of contagious illness, or other unexpected event.*

The plan must also safeguard the rights of all employees provided in state and federal law, including the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA). The United States Equal Employment Opportunity Commission (EEOC) has issued new guidance on the pandemic and the ADA found here: [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html).

The following links provide helpful guidance from the U.S. Department of Labor:

- *Preparing Workplaces for COVID-19* - <https://www.osha.gov/Publications/OSHA3990.pdf>
- *COVID-19 or Other Public Health Emergencies and the FMLA* - <https://www.dol.gov/agencies/whd/fmla/pandemic>

In addition, the plan must ensure adherence to the guidance of the Centers for Disease Control and Prevention (CDC), the Tennessee Department of

Health, and other public health authorities on appropriate steps to take relating to the workplace during the COVID-19 pandemic.

Here is a link to CDC guidance for employers and workplaces on COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

- Can non-licensed employees be required to work when school is not in session?
  - See above response.
- What if non-licensed employees refuse to work? Must they take leave? How does FMLA impact district decisions during COVID-19 closures? What should districts do about contract workers?
  - See above response.

### Additional Questions

- Please provide an update on the potential for virtual Board Meetings.
  - **RESPONSE:** Governor Lee signed [Executive Order No. 16](#) that addresses meetings of governing bodies, to include school boards, during the COVID-19 Emergency. This Order highlights the fact that governing bodies must continue to meet during the emergency to carry out essential functions. Governor Lee has exercised his power and authority under the Tennessee Constitution and other applicable laws to allow governing bodies to electronically conduct business while ensuring the safety and welfare of all Tennesseans. The Office of the Comptroller has also provided guidance on meetings under the Executive Order. The Department encourages Boards to review this guidance and consider implementing the recommendations. [Click here](#) to review the guidance.
- Can you provide more information about resources that are available for parents?
  - **RESPONSE:** TDOE is in the process of developing a resource for parents, which consolidates multiple sources and topics for parent-facing guidance.
- What guidance do you have available related to TSSAA (Spring Sports) and events like Spring Fling?
  - **RESPONSE:** The TDOE recommends school districts work with the TSSAA and the local board attorney to make decisions that adhere to the guidance of the CDC, the Tennessee Department of Health, and other public health authorities.