

Legal and Practical Issues Facing Public School Districts

SPEAKERS

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INTRODUCTION

As states start to reopen following COVID-19 closures, huge questions remain about what school will look like in Fall 2020.

- 40 percent of US households have school-aged children and 51 percent of single-mother households have school-aged children.
- Approximately 50 million US children are in grades 1-12 and another 5 million are in Pre-K or kindergarten.
- There are approximately 3.2 million public school teachers in the US
- In the 2015-16 school year, only 21 percent of public K-12 schools offered at least one course online.

Meanwhile, 69 percent of Americans who have kids under the age of 18 living at home who were enrolled in school before the pandemic, are not willing to send their kids back yet.

A recent (non-scientific) survey of Ohio parents found 60 percent say they would send their kids back to school in the fall. Only 11 percent said they wouldn't, but 29 percent were "unsure." However, 40 percent said they would not send their child back if the child would have to wear a mask; 32 percent said they would.

Overall – recommending planning for three scenarios:

- Fully in-person return;
- Blended learning return; or
- Fully distance learning return.

Also plan for the fact that you may be switching among these options during the year.

We see five "buckets" of reopening issues: (1) Students, (2) staff, (3) parents, (4) operations and (5) lobbying and legislation.

PRACTICAL ISSUES: STUDENTS, STAFF AND PARENTS

Dr. Celico suggested:

- Focusing on two overarching issues: Access and equity
- Establishing 2 taskforces: (1) Return to work and (2) return to school with the taskforces breaking into subgroups to discuss topics including:

- Equity
- Assessments
- High-risk and medically fragile students and staff
- Technology
- Community communications
- Curriculum
- Educational settings
- Master schedule (including school calendar, instructional minutes, employee workdays, etc.)
- Surveying parents on needs
 - Giving out Chromebooks and hotspots – using CARES funding to get to 1:1
 - Summer program with synchronous online instruction
 - Provided parent instructions/training on Google functions
- Distance learning parameters (curriculum, interaction between students and teachers, etc.); evaluating staffing needs
- Staff was already Google certified

LEGAL ISSUES: STUDENTS, STAFF AND PARENTS

Students

- Re-Entry Protocols: How do we ensure students returning have not been exposed and/or are not infected?
 - Consider high-risk student populations and whether they need to continue distance learning.
 - Remind parents that laws regarding vaccines remain in effect and students must be up-to-date before returning to school. (Especially important now to reduce chances for other outbreaks.)
 - Masks: Expect that students will be required to wear them, but we don't know yet who will be required to provide and/or clean them.
 - Also consider how to handle students who cannot wear them (sensory issues, breathing issues, etc.) → Likely a 504 accommodation conversation.
 - Where will you quarantine students who turn up sick during the school day?
- Scheduling
 - Social distancing rules will almost certainly still be in effect.
 - Smaller class sizes
 - In-person attendance only a couple days a week?
 - Some students attending in-person and others remote?
 - Consider updating FERPA notice to account for livestreaming of classes.
 - Review Board policies regarding videotaping students and consider waiving for livestreams.
 - Other student privacy issues?
 - Adjusted lunch schedules and/or spaces?
 - Adjusted recess schedules and/or spaces?
 - Adjusted passing periods?
 - Adjusted bus routes?
 - Legislature would have to act again to approve online learning, so watch for that.
 - Be careful if any hours cap is imposed on online learning.
 - Ideas some districts are considering:
 - At the elementary level, teaching only reading and math in person, the rest virtually.
 - At the secondary level, reverting to state minimum requirements and cutting back elective options.
 - Reassigning teachers with K-12 licenses (specials teachers) to elementaries to keep class sizes smaller.

- How do the three scenarios impact your transportation routes?
- Access to Distance Learning:
 - Public schools must provide equal access to all children – this means ensuring access to any technology necessary to the educational program.
 - If school is online, this could mean an obligation to provide computers and/or Internet to free/reduced lunch students.
 - Consider grant opportunities or partnerships with private companies.
 - Computers, hot spots, high-speed internet – all issues.
 - Special education: How can services be provided remotely to the maximum extent possible?
 - ESY note: Ohio *schools* have not been approved to re-open, so ESY programs cannot run in person if they are “schools” or fall into the “targeted educational support programs” exemption. Questions remain as to whether they can be considered “camps.”
 - Buildings have been ordered to remain closed to students at least through June 30.
 - “Targeted educational support programs” are OK if they have prior written approval from the local health department and the approval is provided to ODE and ODH. The programs must follow all social distancing guidelines.
 - Local approach could lead to significant inconsistencies in ESY services across the state.
 - Review carefully any proposal from a private provider to reopen in-person schooling as these programs will also need local health department approval and could be counting on public schools for transportation.
 - If you are providing any educational program to regular ed students, you are required to provide a full educational program to special ed students.
 - Minimize compensatory education requirements.
 - Prioritize meeting ETR and IEP deadlines.
 - Put processes in place for reliable data collection.
- Food insecurity:
 - Develop plans under all 3 scenarios for delivery/pick-up of free/reduced meals.
 - Look for extensions of current relaxation of rules on meals needing to be served on-site.
- Discipline: Code of conduct applies in full force whether in-person or distance learning.
 - Reiterate expectations to parents and students.
 - Distance learning: Plagiarism is a particular problem.
 - In-person learning: Consider how failure to follow social distancing and other mitigation protocols might fall under your code.

Staff

- Issues affecting all staff:
 - State funding reductions:
 - CARES Act requires states to try to maintain current levels of funding, but allows for exemptions. The educational stabilization fund requires that district receiving these funds continue to pay its employees to the greatest extent possible. If your district receives ESF monies, you must be aware of this requirement if you are going to layoff or reduce wages
 - Run projections assuming 5-15 percent reductions in state funding.
 - Increased property tax delinquencies affecting district revenue. Cuyahoga County recently projected a 10% drop in property tax collections.
 - RIFs/Layoffs:
 - First consider whether salary and/or step freezes would suffice and approach unions about those options.
 - Could try for agreement to implement immediately.

- Could also try for agreement to implement if certain conditions are triggered (i.e. 5% cut in state funding → immediate salary freezes for all employees).
 - Non-union employees (including administrators) should see the same percentage reduction/impact as union employees.
 - Review CBA language on RIFs and layoffs and Board policy on Administrative layoffs and be sure you understand the timelines.
 - Approach unions for relaxation of timelines as needed.
 - If your CBA calls for notification of specific assignments by a certain date, consider whether you need those dates extended.
- Return-to-work protocols: Develop policies consistent with state and federal orders and guidelines, including for wearing masks, maintaining social distance, and maximizing work-from-home opportunities where possible.
 - Keep in mind many of these areas may be mandatory subjects of bargaining.
 - Develop an exposure control plan.
 - PPE: Who will have to wear it? Who will have to provide it?
 - Public Employment Risk Reduction Program
 - CDC protocols for cleaning
 - CDC protocols for engineering and administrative controls
 - Develop an exposure control plan for different scenarios
 - Self quarantine
 - Conduct a contact tracing assessment to determine if others should be isolated or quarantined
 - Implement appropriate cleaning
 - Know that your staff will be nervous to come back to work in person. Prepare to address those fears with clear communications regarding safety plans and expectations for employees.
- Teachers: You will likely need to address the following topics via MOUs with your teachers unions this summer:
 - See if your CBA has a provision for midterm bargaining or whether midterm bargaining and/or contract changes could be triggered due to exigent circumstances.
 - Evaluations: Define “observation” and “walk-through” in the context of distance learning.
 - Workday: Establish how and when teachers will have planning and PD time under the 3 scenarios.
 - Class size: Consider whether any CBA limitations on class size need to be waived if distance learning is in effect.
 - Recording classes: If your CBA contains language prohibiting the recording of teachers in class, you will need to modify that for any distance learning scenarios.
 - Also consider implications of adults at home with students doing distance learning, and whether that triggers CBA provisions regarding classroom visits or observations.
 - Curriculum development: Consider whether you have the resources to incentivize teachers to develop curriculum for distance learning.
 - Professional development: Explore options to adjust your calendar for next year to front-load professional development in areas teachers indicate interest (revolving around distance learning and technology).
 - Supplemental contracts: Include language in all supplementals that they will be prorated if the season/activity is cancelled.
 - Workers’ comp concerns: Teachers are working under completely different physical conditions, having to click open and close hundreds of documents, scroll through pages, etc. on a frequent basis, and sitting for so long when they are generally used to being on their feet most of the day.
- Classified staff:
 - Workday:

- Review which jobs can be performed entirely or partly remotely and whether any adjustments need to be made to the workday for those positions.
- Also review jobs that can only be performed on-site and determine whether workdays should be staggered for safety reasons.
- Classifications and assignments: Review CBA language regarding management's ability to reassign people among classifications and, if necessary, bargain for more flexibility.
 - Argument here: Effort to minimize necessity for RIFs.

Parents

- Again, mostly practical issues here regarding how and when to communicate with parents about plans.
- Consider that most parents will have used up EPSL and EFMLA leave by the start of next school year → likely to require another round of federal legislation to address.
 - Note: Many of your employees will be impacted as parents. Plan for increased absences across your workforce.
- Parents may need reminders that standard rules regarding things like truancy and vaccinations apply even if schools are operating remotely.

PRACTICAL ISSUES – OPERATIONS AND BUDGETING

Lew Galante discussed:

- Concerns and process regarding local and state revenue:
 - Local –
 - Ask your auditor what they are seeing. Make the call and stay on them.
 - Review your district's history from past recessions.
 - Consider whether the impact of the pandemic could be more pronounced in your community (for example, if your community has a lot of small businesses that will have been hit hard by mandated closures).
 - State –
 - Cut levels are still unknown. We do not know the percentage reduction, the formula they will use, or when they will let us know.
 - Look at the federal side. Will there be a state and local relief bill? That proposal started with House approval but it's said to be dead in water in senate. Even if the Senate acts on funding, it likely will not come before the August 8 recess date.
- Expenses:
 - Review thoroughly the restart plan and the guidance with your board, health department and legal counsel. There may be latitude given if you can provide a better plan that may also be cost efficient.
 - Supplies: Talk to maintenance/custodial/business personnel about what they are buying and the quantities. These costs can be HUGE and they may or may not be necessary. Guidelines change daily and depends on type of return to school plan that you are using.
 - Supplemental contracts: Make sure you meet with legal and union to preempt a payment if the activity gets cancelled, and/or make the contracts conditional on student participation.
 - Staffing: Seek relief where you can regarding assignments and contractual dates. Look at creative ways to use non-instructional personnel. Make your unions part of the conversation now while districts have leverage to negotiate.
 - Service contracts: Modify where appropriate and ensure vendors are still prepared to perform on the contract. Consider building in the ability to modify if the district's circumstances or mode of instruction changes.

Darryl Woolf discussed:

- Supply chain issues:
 - It is very difficult to obtain supplies to adequately clean and sanitize: Supplies are on back order and deliveries have been delayed by months.
 - Without sufficient supplies and staffing, districts will not be able to provide a safe physical environment
- Staff reductions may cost districts who are self-insured and will face additional unemployment costs through RIFs.
 - Some unions have been open to discussing step and salary freezes to avoid layoffs, but be careful not to guarantee no layoffs in exchange for relief on salaries and wages.
- Consider partnering with local health care institutions to train staff on how to reduce the risk of virus spread in the workplace/school setting.

LEGAL ISSUES: OPERATIONS AND LEGISLATION –

Operational Issues

- Few legal parameters here, but lots of practical issues:
 - Cleaning protocols
 - Student food service
 - Transportation
- Comply with all state and federal orders on these subjects.
- Pay particular attention to grant parameters and waiver of certain requirements (i.e. in-person food service, etc.).

Lobbying and Legislation

- Schools (likely through statewide organizations) will need to remain active in pushing education issues to the forefront.
- Anticipate further action at the state level on at least:
 - Expanding online learning approvals
 - Requirements for safety measures if schools return in-person
 - Allocation of money Governor and ODE received through CARES Act grants
- Anticipate further action at the federal level on at least:
 - Support to individuals
 - Paid leave options
- Key state-level issues:
 - Legislation pending to address automatic rollovers to continuing contracts for administrators and teachers whose evaluations are not complete.
 - Furloughs are currently not available to school districts. BASA and OSBA have asked for legislation to address this.
 - Extension of HB 197: BASA and OSBA are pushing for extensions on waiver of graduation requirements, TGRG and district report cards.
 - Possible need to readjust SGM requirements for next year (given no 2019-20 value-added data).
 - Hold-harmless protections for schools in case everyone comes back and someone gets sick.