

Ohio K-12 schools will stay closed through the end of the 2019 – 20 school year due to COVID-19, but the question remains what school will look like across the state during the 2020 – 21 school year.

Ohio Governor Mike DeWine has signaled he may require schools to have students on staggered schedules and devote as much as one day a week entirely to cleaning. Districts need to plan now for August to ensure they have the necessary policies, procedures and contract language in place to address a range of scenarios in the fall, from a normal return to school, to 100% remote learning and everything in between.

Terms and Conditions of Employment

Chief among the issues that schools will need to address this summer are potential changes to the terms and conditions of employment for your staff. For union employees, these are mandatory subjects of bargaining and, while unions have generally been flexible and cooperative in working with districts to get through the 2019 – 20 school year, it will be important to have more formal agreements and plans in place heading into 2020 – 21.

Budget Adjustments

The state is projecting significant drops in state support for schools next year. Treasurers should review their forecasts in light of these projections (currently signaled to be anywhere from 5% to 20%) and determine whether the district can continue to meet its contractual obligations on current contract terms. Your collective bargaining agreements were bargained without COVID-19 assumptions built in. If you have concerns regarding ability to pay on those contracts now, it will be necessary to discuss those issues with your unions this summer and negotiate adjustments to pay scales or other mitigating steps.

Reductions in Force

Although school districts may not lay employees off because schools are closed due to the pandemic, they may still enact layoffs for “financial reasons” or any other reasons permitted by R.C. 3319.17 and the applicable collective bargaining agreement. Districts facing uncertainty due to significant cuts in state funding should review the reduction in force/layoff provisions of their contracts, paying particular attention to notice deadlines and procedures. Districts may also consider across-the-board salary freezes as an alternative to layoffs, but that will require bargaining with and agreement from your unions.

Keep in mind that some unemployment insurance provisions of the Coronavirus Aid, Relief and Economic Security (CARES) Act provide unemployment compensation for qualifying individuals to be paid by the federal government, not employers. Additionally, for public school districts that are reimbursing employers, their unemployment costs, including even unemployment costs not caused by COVID-19, are eligible for up to 50% reimbursement through the end of this calendar year. That could be a further cushion for Ohio schools forced to enact RIFs at the start of the 2020 – 21 school year.

Finally, examine your collective bargaining agreements (CBAs), particularly those for classified staff, to review your options for reassigning employees across classifications. CBAs with strong management rights clauses, or specific language regarding involuntary transfers, could be helpful if you need additional support in food service, for example, but suddenly have no need for your bus driver fleet.

Personal Protective Equipment and Other Protective Measures

Requiring the use of personal protective equipment (PPE) is likely a mandatory subject of bargaining. If your district wants to require staff to wear masks, for example, that will need to be bargained with the impacted unions. (Non-union staff may be required to wear masks without any change to their contracts or status.) Remember that even if you, as management, do not feel the need to implement PPE requirements or other measures, your unions may want to meet to discuss these issues and you are required to do so. Ground these discussions in recommendations and mandates from the Centers for Disease Control and the Ohio Department of Health to ensure you are in compliance with federal and state requirements.

Districts should also consider whether they plan to take the temperatures of any students and/or staff reporting to school in the fall. Under current federal and state guidance and orders, employers are encouraged to take employees’ temperatures (via no-contact or forehead thermometers) when the employee reports to work. Any employee who has an elevated temperature should be sent home. Districts must decide whether they intend to take staff members’ temperatures, but should also consider whether they need to take students’ temperatures, as discussed below. Taking staff members’ temperatures does not require bargaining; however, for non-exempt employees, time spent waiting to have their temperature taken must be paid and counts toward overtime.

Daily Schedules

In all likelihood, your CBAs speak to employees' daily schedules – start times, end times, breaks, planning periods. If your staff's and teachers' schedules during online learning periods will look nothing like their contracted schedules, then you should work with your unions to develop Memoranda of Understanding regarding expected hours of work and, for teachers, what a remote teaching day looks like in terms of contact with students, planning and other duties.

Teaching Conditions

For certified staff, there are additional terms and conditions you must consider. For example, if your CBA limits class sizes or addresses number of "preps," think about whether you need to adjust those sizes and numbers for online learning. Many teacher contracts also address cameras in the classroom. With online learning often incorporating the recording of lessons, review whether your contract needs to be adjusted to allow for recording video and/or audio under those circumstances.

All districts must also work with their teachers' unions to address the potential for virtual evaluations in the 2020 – 21 school year. While the state waived evaluation requirements for 2019 – 20, there is no indication requirements will be waived for 2020 – 21, even if schools are operating remotely. Districts need to develop plans for how virtual evaluations will be conducted and what constitutes an "observation" or "walk-through" of an online class.

Finally, teachers have pieced together online teaching materials to wrap up the 2019 – 20 school year, but they will need additional resources, guidance and support if online schooling continues indefinitely into next year. Consider front-loading your professional development days at the beginning of the 2020 – 21 school year to allow for training in new platforms and resources available to teachers. Look also at whether your CBA provides teachers the opportunity for additional compensation if they write curriculum over the summer. This could be a great time for districts to invest in new curriculum and technology – that which can be easily adapted to remote or in-person learning as needed. Remember that substitutes may also require training if they will be expected to step in and teach remotely when a teacher is unavailable. Talk with your Educational Service Center and other groups that supply substitutes to ensure subs are provided the materials they need to prepare for the school year as well.

Student Issues

First, it is important for districts and parents to remember that most of the standard laws regulating public school students still apply. Students are still expected to have required vaccines, for example, so even though doctors' offices may be open for reduced hours, parents still have to ensure their children are properly vaccinated before they return to school. Truancy laws also still apply, even if parents are afraid to send their kids to school because of COVID-19 or children are attending school online. And remember, no matter where your students are learning, they are subject to your code of conduct. The same disciplinary rules and consequences apply, regardless of whether the misbehavior occurs on campus or off, if it occurs in the context of school.

Regarding online learning, while the legislature approved all schools to provide lessons online to finish the 2019 – 20 school year, the legislature will have to act again if it wants to approve across-the-board online learning for fall 2020. Although districts should plan for the possibility of online learning to start the 2020 – 21 school year, we will have to wait and see if that gets approved in Columbus before any such plans could be implemented.

Consistent with the guidance Ohio has issued regarding employees being required to wear masks, districts should develop contingency plans in case this requirement is extended to students. These conversations need to address who will provide the masks and, if the school is providing them, who will be responsible for ensuring they are cleaned regularly.

Scheduling

As with staff, scheduling is a primary concern for students as schools reopen in the fall. Districts should develop plans to maximize social distancing among students (whether that means smaller lunch periods, fewer kids on a school bus or staggered in-person attendance days). In doing so, be mindful of the state's hours requirements for student instructional time. Just because students are not physically in school does not mean the hours requirements are waived. Consider whether your board needs to reduce any requirements beyond the state minimums in the event school occurs remotely. Also, look for opportunities for blended learning models, where some students participate remotely in class while others attend the class in-person or students attend in-person on some days and remotely on others.

Access and Special Services

One of the biggest problems facing districts moving from in-person to online learning has been ensuring equitable access to technology necessary to participate in virtual learning. Districts obviously cannot be responsible for providing high-speed internet or computers to every student, but the state and federal governments, through various agencies, have made available significant grant resources to expand access to these tools and others that will enable online learning. Work with the Ohio Department of Education or counsel to identify those opportunities and help your district and your students benefit.

Special education students face particularly large hurdles when schools close. Disruption in routine can impact these students more acutely than others. These students may also have a harder time adjusting to a school environment where adults and/or peers are wearing masks. Remember that your obligation to provide a free, appropriate public education to special education students extends as long as you are providing services to typical students. Districts need to plan for and try to minimize the amount of compensatory services they are obligated to provide by creatively planning to serve special education students even when schools are closed. For the highest-need kids, this may mean running some limited in-person programs or, in the most extreme cases, finding private programs that are open during school closures.

Additional Considerations

In addition to the issues explored above, school districts have countless pedagogical and practical issues to consider regarding returning to school in fall 2020. Structuring students' schedules will, inevitably, impact parents' work lives (as well as the work lives of those teachers and other school employees who are also parents). Districts will need to create communication plans for informing parents of changes and providing as much notice as possible. Schools are also encouraged to develop plans to increase daily cleaning efforts. While these are not strictly legal issues, they are impacted by the problems and questions discussed above.

2020 – 21 Planning Checklist

- Develop return-to-work policies for all staff, including PPE use, temperature taking, social distancing, etc.
- Negotiate with union(s) regarding required use of PPE.
- Negotiate MOU with certified staff regarding online evaluation procedures.
- Negotiate MOU with certified staff regarding teacher workday, as appropriate.
- Review CBA language regarding reduction in force and assess workforce needs for the 2020 – 21 school year in the event of (1) full in-person return to school; (2) partial in-person, partial online return to school; and (3) fully online return to school.
- Prepare template communications to families regarding the start to school under the three scenarios.
- Check in with any vendors you use regularly to ensure they are up and running and ready for your business.

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