



Commissioner of Education
President of the University of the State of New York
89 Washington Avenue, Room 111
Albany, New York 12234

E-mail: commissioner@nysed.gov
Twitter: @NYSEDNews
Tel: (518) 474-5844
Fax: (518) 473-4909

March 13, 2020

TO: School District Superintendents
School Principals
BOCES District Superintendents
School District Business Officers
Special Education Directors
Charter School Leaders

FROM: Shannon L. Tahoe, Interim Commissioner of Education

RE: **Preliminary Guidance on the** Preparation for Novel Coronavirus (COVID-19)
Outbreak in New York State

Purpose/Background

School districts should be engaged in contingency planning to prepare for the outbreak of the Novel Coronavirus (COVID-19) occurring in New York State. This virus can spread from person-to-person, and the number of cases detected in the United States and New York is growing.

This is an emerging, rapidly evolving situation that may have significant implications for New York communities, including schools, in the coming days and weeks. Districts should be developing response plans and establishing mechanisms for ongoing communications with staff, students, families, and communities.

The following is the most up to date and best guidance the Department has as of today, March 13, 2020. As you know, this is a rapidly evolving situation and it is expected that additional guidance will be issued as the situation warrants and we obtain information from our state and federal partners. The Department will send updated guidance as quickly as it can. Please check the [New York State Department of Health \(DOH\) Novel Coronavirus webpage](#) and the [New York State Education Department's \(NYSED's\) COVID-19 website](#) for updates frequently. Districts should also be informed by the additional resources for elementary and secondary schools released by the U.S. Department of Education (USDOE) on March 12, 2020:

- [Protecting Student Privacy: FERPA and the Coronavirus](#)
- [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#)
- [Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the Elementary and Secondary Education Act](#)

Key Actions Steps for School Districts

Ground yourself and your staff in the facts and stay up to date on the current status of COVID-19 in New York. The best source of information right now is the [New York State Department of Health \(DOH\) Novel Coronavirus webpage](#). You can also find information on the [New York State Education Department's \(NYSED's\) COVID-19 website](#), including [guidance on when school closures are required and cleaning and disinfection guidance for primary and secondary schools as well as reporting requirements for school closures](#). The site also includes a link to Centers for Disease Control (CDC) resources and information. Both the DOH and CDC websites are updated regularly.

Continue to engage in routine infection control procedures. It is important to emphasize—and teach, when necessary—good personal hygiene practices to prevent the spread of viruses. This includes appropriate handwashing, covering coughs, and staying home when sick. Also, standard cleaning and disinfecting procedures are typically adequate to slow the spread of respiratory illness.

Establish an open line of communication with your [Local Health Department \(LHD\)](#). LHDs protect the health of their communities from disease and harm before, during, and after emergencies. Now is the time to work together with your community to prepare for the possibility that “social distancing” measures will be taken by State and local government, such as the cancelation of public gatherings, and the closing of businesses, schools, and/or childcare programs. Schools with questions regarding student or staff exposure to COVID-19 should be directed to their local health department. Decisions about the need for exclusion and the length of the exclusion period for students and staff exposed to or with confirmed cases of COVID-19 will be made by local health departments according to [jointly issued guidance from New York State Department of Health and New York State Education](#). **As a reminder, while schools have the authority to exclude a student in the public schools who shows symptoms of any communicable or infectious disease reportable under the public health law that imposes a significant risk of infection of others in the school, schools DO NOT have the authority to exclude well or asymptomatic students and staff based on race, country of origin, religious affiliation or any of these perceived statuses.**

Routinely communicate with your school community. This includes communicating with your collective bargaining agents and contracted educational providers, about this evolving situation. Staff, students, and families should know where to go to find accurate, factual sources of information, and should know that you are monitoring the situation and are in ongoing communication with your local public health officials. A simple step such as posting a brief message to your district homepage with links to the DOH webpage and fact sheets will reduce anxiety in your community.

Intentionally and persistently combat stigma. As new information emerges, please remind your community that the risk of COVID-19 is not at all connected to race, ethnicity, or nationality. Stigma will not help to fight the illness. Sharing accurate information during a time of heightened concern is one of the best things we can do to keep rumors and misinformation from spreading.

When preparing for a potential COVID-19 outbreak, school officials must not rely on assumptions or stereotypes related to race, color, or national origin in identifying students, families, or employees who may have recently traveled to a country with widespread transmission of COVID-19 or who may otherwise be at risk of infection.

In addition, school officials should be mindful that bullying, intimidation, or harassment of students based on actual or perceived race, color, national origin, or disability may result in race- or disability-based harassment that violates state and federal civil rights laws, including the Dignity for All Students Act (DASA). School districts should consult the March 4, 2020 [Letter to Education Leaders on Preventing and Addressing potential discrimination associated with COVID-19](#) by the USDOE Office for Civil Rights and must take immediate and appropriate action to investigate or otherwise determine what occurred when responding to reports of bullying or harassment of students based on actual or perceived race, color, national origin, or disability (including being infected with COVID-19 or perception of being infected). If an investigation reveals that the actual or perceived race, color, national origin, or disability was a material incident under DASA or created a hostile environment—that is, the conduct was sufficiently serious to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the discrimination, bullying or harassment; eliminate any hostile environment; prevent the bullying or harassment from recurring; and, as appropriate, remedy its effects.

Engage in contingency planning. The possibility of extended school closures if the situation in our state dramatically change in the coming weeks should be considered. Closures in other countries and states experiencing the COVID-19 disease outbreak are ranging from a few days to a few weeks.

Below are a series of topics your school district should consider related to school district closures. School districts should be engaged in contingency planning to prepare for possible widespread absences or extended day closure of school as a result of the Novel Coronavirus (COVID-19).

The Department has posted [extensive guidance on its website to aid districts in gathering important information on the COVID-19 threat](#). Preparing for widespread absence or an extended day shutdown of school buildings and programs due to the spread of any illness is prudent. This is an emerging, rapidly evolving situation that may have significant implications for New York communities, including schools, in the coming days and weeks. Districts should be developing operational and instructional response plans and establishing mechanisms for ongoing communication with staff, students, families, and communities.

Continuity of Learning

All education stakeholders should consider the effects of significant absences on student achievement and establish plans that not only ensure health and safety, but also consider continuity of learning to the extent feasible and appropriate. New York State schools must consider the needs of all students and strive to ensure that any plans for continuity of learning are equitable and available to all students. [Guidance from the USDOE’s Readiness and Emergency Management in Schools Technical Assistance Center](#) provides the continuity of learning key considerations such as:

- **Designing for Unique Needs of All Students.** Instructional design, course design and plans for support must be aligned with the skill level of age groups and abilities, including students with disabilities and English Language Learners, to the greatest extent possible. For example, those serving the elementary and middle-school levels might have to consider creating instructional materials for both students and parents, while high school students are likely more capable independent learners.
- **Supporting System Orientation/Preparation.** Orientation/preparation is necessary for faculty, staff, students, and parents on the use of continuity of learning systems to ensure true continuity and accessibility.
- **Ensuring Accessibility.** Not all students may have access to the Internet, phone lines, TV or radio at the same time, or at all, during a prolonged school closure or student absence. Therefore, it is important to offer a variety of methods of learning. Districts considering online learning will need to ensure that the means used complies with all applicable laws, including the Family Educational Rights and Privacy Act and Education Law S. 2-d, and Section 508 of the Rehabilitation Act which provides accessibility guidelines for students with disabilities.
- **Preparing for Short- and Long-Term School Closures.** Tools that might be useful during the short-term might not work for long-term closures. School emergency management and continuity planning teams must assess which sets of tools work best for their schools and/or districts based on the anticipated length of closure, current resources available, student access, and grade level.

In addition, the US Department of Education issued guidance in 2009-10 related to [Continuity of Learning for schools \(K-12\)](#) during the H1N1 influenza outbreak. Districts may find this document helpful to their planning as well.

Earning Course Credit and Meeting Unit of Study Requirements

In districts where distance and online learning methods are available, or other continuity of learning strategies are utilized, the priority for the instruction should be that which best prepares students to meet the learning outcomes for the course and prepare for the culminating examination if applicable. Any student who achieves the learning outcomes for the course should earn the applicable course/diploma credit without regard to the 180-minute/week unit of study requirement in Commissioner's Regulations Part 100.1.

Further, in the event that extended closure interferes with a school or district's ability to provide the full unit of study by the end of the school year, either in face-to-face instruction or through other methods, as long as the student has met the standards assessed in the provided coursework, the student should be granted the diploma credit.

Admission to Regents Examinations

Commissioner's Regulation 8.2(a) states that all pupils who have studied a subject at an approved school for a period of time not less than that prescribed by the commissioner shall have the right to be admitted to the Regents examination at such school. In such instances where the COVID-19 virus has caused either an extended absence of individual students, or an extended closure of an

entire school or program, thus preventing either the school's ability to provide or student's ability to meet the unit of study requirements, the superintendent may admit students enrolled in such courses to the culminating Regents examination.

In cases where the COVID-19 virus has caused either an extended absence of individual students, or an extended closure of an entire school or program, thus preventing either the school's ability to provide or student's ability to meet the mandatory laboratory requirement for admission to a science Regents examination, the superintendent may admit students enrolled in such courses to the culminating Regents examination.

Special Education

Provision of education for students with disabilities is another important consideration when engaging in this planning. Districts should plan how they will continue to meet the requirements of the Individuals with Disabilities Education Act and should be informed by the most recent [USDOE Guidance \(Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus disease Outbreak – March 2020\)](#) in this regard. The Department will be as flexible as state and federal laws allow and will continue to investigate and inquire about additional flexibility for provision of services for students with disabilities during the outbreak. Consistent with the most recent federal guidance, please consider and the following during your contingency planning:

- Develop a protocol to communicate proactively with parents and guardians regarding their child's individualized education program (IEP) services prior to and during a closure, as well as follow-up communication on next steps once the school reopens, to the extent possible.
- Develop a protocol to communicate with school administrators and educators in order to prepare staff for any plans to address the needs of students eligible for special education, child find activities, evaluations/re-evaluations, and IEP implementation.
- Consider what other agencies and organizations should be included in the communication.
- If a school district closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then the school district would not be required to provide services to students with disabilities during that same period of time.
- If a school district continues to provide education opportunities to its general student population during a school closure, the school district must ensure that students with disabilities also have equal access to the same opportunities, including the provision of a free appropriate public education. Schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education services identified in the student's IEP. NYSED understands there may be exceptional circumstances that could affect how a particular service is provided.
- CSEs may, but are not required to, include distance learning plans in a student's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the

student's home. Creating a contingency plan gives the student's service providers and the student's parents an opportunity to reach agreement as to what circumstances would trigger the use of the student's distance learning plan and the services that would be provided during the closure.

- Review how the closure impacts the delivery of special education and related services to students eligible for special education services. If a student does not receive services during a closure, the Committee on Special Education must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Child Nutrition Services.

The Richard B. Russell National School Lunch Act authorizes the provision of meals to children who are not in school during unanticipated school closures through the Summer Food Service Program (SFSP) or the National School Lunch Program's Seamless Summer Option (SSO). Under normal circumstances, these meals must be offered in a congregate setting (7 CFR 225.6)(e)(15)) and at non-school sites (7 CFR 225.6(d)(1)(iv)). However, during a public health emergency due to COVID-19, social distancing may be necessary to avoid spread of the virus. The USDA requires that the State apply for general authority to grant waivers to districts/schools and the Department applied for and was granted these waivers. Additionally, the USDA requires that each school district individually apply to the Child Nutrition Office at the State Education Department for a waiver to continue to administer Child Nutrition Programs in the event of closure during the state of emergency. The application is now available on the [NYSED Child Nutrition Website](#). The Department recommends that all school districts and other school food authorities apply now, so that the waiver is in place in the event of a school closure.

Administration of State Assessments

In accordance with the [USDOE's March 12, 2020 Fact Sheet on Assessments and Accountability](#), the USDOE:

“...generally does not grant statewide waivers of assessment requirements under section 1111(b)(2) of the ESEA. The reason is that assessments provide important information to parents, educators, and the public about how well students are doing at mastering a State's content for each tested grade and subject. In cases where a school has been closed for a period of time, the assessment results still provide useful information about where individual students and groups of students will need support in the following school year. However, due to the unique circumstances that may arise as a result of COVID-19, such as a school closing during the entire testing window, it may not be feasible for a State to administer some or all of its assessments, in which case the Department [USDOE] would consider a targeted one-year waiver of the assessment requirements for those schools impacted by the extraordinary circumstances.”

While the [USDOE's March 12, 2020 Fact Sheet on Assessments and Accountability guidance requires states to administer the assessments](#), **NYSED will apply for such waivers for schools impacted by the extraordinary circumstances associated with COVID-19 to the greatest**

extent permitted by federal law. Additionally, NYSED will ensure that no school or district is unfairly penalized for closures due to COVID-19.

NYSED recognizes the current uncertainty of the extent and potential length of school closures as a result of COVID-19 as well as the difficulty for school districts to reschedule state assessments. Therefore, in keeping with the guidance provided by USDOE and to provide as much flexibility as possible for schools, NYSED is extending as much as is feasible the make-up windows for the administration of the Grades 3-8 English Language Arts and Mathematics Tests as well as the scoring windows (highlighted below).

Districts or schools that experience closures, but are not closed during the entire testing window, should make use of the full testing windows, including the expanded makeup periods, to administer State assessments to all students. The revised Spring 2020 administration dates for State assessments are shown below.

Operational Test		Administration Dates	Make-up Dates	Scoring Dates
NYSAA English Language Arts, Mathematics, and Science		Monday, March 9 – Friday, June 5	Make-ups must be given within the testing window	N/A
NYSESLAT Speaking		Monday, April 6 – Friday, May 15	Make-ups must be given within the testing window	Speaking is scored as it is administered.
NYSESLAT Listening, Reading, Writing		Monday, May 4 – Friday, May 15	Make-ups must be given within the testing window	Monday, May 18 – Thursday, May 28
Grades 3-8 English Language	Paper - based	Wednesday, March 25 – Friday, March 27	Monday, March 30 – Wednesday, April 8	Monday, March 30 -- Tuesday, April 14
	Computer - based	Tuesday, March 24 – Tuesday, March 31	Monday, March 30 – Wednesday, April 8	Monday, March 30 -- Tuesday, April 14
Grades 3-8 Mathematics	Paper - based	Tuesday, April 21 – Thursday, April 23	Friday, April 24 – Tuesday, May 5	Friday, April 24 -- Monday, May 11
	Computer - based	Monday, April 20 – Monday, April 27	Friday, April 24 – Tuesday, May 5	Friday, April 24 -- Monday, May 11

Accountability Implications of COVID-19

NYSED will work to ensure that schools are not negatively impacted because of disruptions caused by the COVID-19 virus, to the extent authorized under Federal law. Section 8401 of the ESEA (20 U.S.C. § 7861) permits the Secretary to grant waivers of certain ESEA requirements and, thus, allows the Department to provide some flexibility to schools, districts, and states that may be necessary due to the impact of COVID-19 on the provision of educational services. In addition, Commissioner's Regulations contain a provision regarding extraordinary and temporary circumstances that is explicitly designed to address instances where circumstances beyond the control of schools, such as a pandemic situation, impact an accountability determination. The Department is actively reviewing current federal and state regulations pertaining to accountability determinations and requirements and is working to identify appropriate flexibilities and/or modifications based on the extent of the disruptions caused by the COVID-19 virus.

As detailed in the [March 12, 2020 Fact Sheet on Assessments and Accountability](#), USDOE will consider a targeted one-year waiver of the requirement to identify a school for comprehensive or targeted support and improvement if the reason for the identification was related to the school being closed for a significant portion of the school year. Additionally, USDOE has indicated that it will consider targeted one-year waivers for an impacted school to not factor the participation rate into its Academic Achievement indicator and to exclude the chronic absenteeism indicator from a State's accountability system. **The Department will apply for such waivers for schools impacted by the extraordinary circumstances associated with COVID-19 to the greatest extent permitted by federal law.**

In addition to the potential impact on accountability, NYSED is also working with the United States Department of Education to determine the flexibility that will be offered states to address fiscal requirements such as: maintenance of effort; the requirement to obligate funds in the current Federal fiscal year for providing equitable services to eligible private school students, teachers, and families; and the limitation on carrying over no more than 15 percent of Title I, Part A funds. As more information becomes available it will be shared with the field.

School Closure

NYSED must be able to monitor when schools are closing across the State during a crisis and when a school's emergency response plan is activated. Pursuant to Commissioner's Regulation 155.17(f), each superintendent of a school district, every board of cooperative educational services (BOCES) and county vocational education and extension board, the chancellor of the City School District of the City of New York, and each charter school leader shall notify the Commissioner immediately when the emergency plan or building-level school safety plan is activated and results in the closing of a school, including closure for an outbreak of COVID-19, and shall provide such information as the Commissioner may require. Additionally, pursuant to Education Law §215, the Commissioner may require duly verified reports from any school or institution under the educational supervision of the State and may require such information and in such form as Commissioner may prescribe.

Therefore, effective immediately, each public school district, charter school and BOCES must notify the Department immediately when the emergency plan or building-level school safety plan

is activated and results in the closing of a school using the **Report of School Closure** form. Similarly, when it is determined that it is safe to re-open the school(s) the CEO must inform the Department via the **Report of School Re-Opening**. Both reports are available in the SED Monitoring and Vendor Support System application in the NYSED Business Portal. [Notification Regarding Closure of a School Building](#) (Public Schools); [Notification Regarding Closure of a Nonpublic School](#).

Sharing of Student Information

Under the Family Educational Rights and Privacy Act (FERPA), personally identifiable information (PII) from a student's education records, including student health records, may be disclosed by educational agencies and institutions to appropriate parties in connection with a health or safety emergency, without the consent of the parent or eligible student, if knowledge of the information is necessary to protect the health or safety of the student or other individuals 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36. For more information and additional guidance, please refer to the [March 2020 U.S. Department of Education – Student Privacy Office's FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions \(FAQ's\)](#) issued March 12, 2020 and prior [U.S. Department of Health and Human Services and U.S. Department of Education Joint Guidance](#).

Under Education Law § 2-d, the use or disclosure of personally identifiable information for an administrative purpose authorized or required by law by a person acting exclusively in his or her capacity as an employee of an educational agency, New York state or any of its political subdivisions; any court; or the federal government, is permitted ([see](#) Education Law §2-d[7][d]). The PII disclosed must be limited to only that necessary to comply with the law's requirements. The Department recommends that the educational agency ensures that such requests for PII are in writing, the identity of the requester is reasonably verified, and a record of the request for PII and what PII is disclosed is retained by the educational agency.

In compliance with state law and regulation, educational agencies must take measures to protect students' personally identifiable information from unauthorized access when providing information to officials or when considering using digital (distance) learning platforms. Examples of such measures include de-identifying data to prevent the public disclosure of students personally identifiable information, and the use of encryption or an equivalent technical control that renders personally identifiable information unusable, unreadable or indecipherable to unauthorized persons when transmitted electronically.

180-Day Requirements

[Governor Executive Order No. 202.1](#), issued 3/13/2020, contains this language:

“Suspension of law to allow waiver of requirements necessary for apportionment of school aid:

- Section 3604(7) of the Education Law, to the extent consistent and necessary to allow the commissioner to disregard such reduction in the apportionment of public money due to a failure by a school to meet the instructional requirements proscribed within

this section due to the properly executed declaration of a local state of emergency as defined within sub-section (i), a school is directed to close by a state or local health official or following a properly executed declaration of a state of emergency as defined within sub-section (i), limited to the extent that those specified schools are unable to make up missed instructional days.”

The Department will provide further updates on this when more information becomes available.

School Board Meetings: Open Meetings Law

Pursuant to [Governor Executive Order No. 202.1](#) issued 3/13/2020, the Open Meetings Law requirements for school board meetings have been temporarily modified, for through April 11, 2020, as such:

“Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.”

Information and Assistance

For general questions regarding this bulletin, please contact the dedicated mailbox: covid19@nysed.gov.

For specific questions about school meal programs, please contact the Child Nutrition Office at 518-473-8781 or email cn@nysed.gov.

For specific questions about special education, please contact the Office of Special Education by email at speced@nysed.gov.

For specific questions about civil rights compliance, contact the U.S. Department of Education Office of Civil Rights at 1-800-421-3481, ocr@ed.gov.

For relevant guidance regarding how schools can protect civil rights during an outbreak, see the U.S. Department of Education Office of Civil Rights [Fact Sheet](#) released during the 2014 Ebola outbreak.

Please direct any student privacy questions to: FERPA@ed.gov or Privacy@nysed.gov.

For specific questions about state assessments, please contact the Office of State Assessment at 518-474-5920 or email emscassessinfo@nysed.gov.

For state aid questions, please contact the Office of Education Finance by telephone at 518-474-2977.

For questions related to participation rates and institutional accountability, please contact the Office of Accountability at accountinfo@nysed.gov.