

**\*\*Updated Friday, March 27 at 8:15 pm.**

**During the COVID-19 public health emergency, our public schools have a significant leadership role to play. Every member of your school district (trustees, administrators, certified and classified staff alike) will be critical in providing community leadership in meeting the needs of your families and students during this crisis. It is vital that school leaders communicate effectively and frequently with your community, staff, parents and students to keep them informed about measures your district is taking to minimize the impact during this time of great uncertainty.**

MT-PEC has developed this FAQ to provide answers and best practices to many of the questions our public schools have at this time. We will update this FAQ as frequently as necessary to continue providing Montana's public schools with information to assist you through this challenging time.

## **FREQUENTLY ASKED QUESTIONS**

### **Governor Bullock's Directives**

#### **1. Question: What did Governor Bullock's March 19 directive include?**

**Answer:** On March 19, Governor Bullock released a directive providing additional guidance to Montana's public schools regarding school closures in response to COVID-19. This guidance contains two parts affecting schools:

1. Clarification on school district and employee expectations through the March 27, 2020 closures.
2. Expectations of through the extension of school building closures through April 10.

You can read the full press release announcing [the extension of closures here](#).

***We strongly recommend reading MT-PEC's full summary of the [directive here](#).***

With the Governor's extension of public school closure and with the assistance of MT-PEC, the next steps for the education community and school districts include:

- With your school employees and community, develop a plan to provide:
  - Offsite learning instruction and structure
  - School meals, consistent with what the district regularly provides
  - Services for students with disabilities
  - Other services customarily provided to students
- To assist districts, MT-PEC is developing a model plan form for districts to utilize if they so choose. You can find the [MT-PEC Model Plan of Action here](#). District plans are due to the [schoolclosure@mt.gov](mailto:schoolclosure@mt.gov) by Friday, March 27.
- MT-PEC is developing and will publish a model status report for districts' use should they so choose.

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- MT-PEC has developed a survey that was sent to all superintendents and county superintendents requesting feedback on how Montana's public schools are addressing the four areas referenced above. [You can find that survey here.](#)

IF YOU HAVE NOT ALREADY DONE SO, YOU NEED TO SUBMIT YOUR COVID-19 PLANS TO THE GOVERNOR'S OFFICE AS SOON AS YOUR BOARD APPROVES THE SAME TO ENSURE YOUR FUNDING WILL CONTINUE AND YOU WILL NOT HAVE TO MAKE UP SCHOOL DAYS.

- 2. Question:** During the Governor's "Stay at Home" directive, are school employees considered essential?

**Answer:** Yes, the directive follows the guidance of the Department of Homeland Security in defining essential services. For the purposes of K-12 education the directive considers K-12 education an essential service. The Governor's Office has confirmed that the March 26 directive does not change the critical functions of both certified and classified in providing educational and other services to students and families. You can read the full [MT-PEC guidance on the Governor's directive here.](#)

### **District Emergency Declaration**

- 1. Question:** What should the agenda item and action be listed as for declaration of unforeseen emergency?

**Answer:**

**Action Item:** Board consideration of current circumstances related to COVID-19 for possible declaration of unforeseen emergency pursuant to 20-9-801 through 20-9-806, MCA.

**Note:** 20-3-322(3) provides: (3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the ***48-hour notice is waived in an unforeseen emergency.***

**Note:** 2-3-202 provides: Meeting defined. As used in this part, "meeting" means the ***convening of a quorum*** of the constituent membership of a public agency or association described in 2-3-203, whether corporal or ***by means of electronic equipment***, to hear, discuss, or ***act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.***

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- 2. Question:** What should a motion include to utilize [20-9-311 4\(d\)](#) allowing my district to identify students who are proficient and provide offsite instruction to those students who are not proficient?

**Answer:** Assuming that the board does not believe it has already delegated these powers (for offsite instruction, proficiency declarations) to its administration, it should pass motions as follows:

**Proficiency:** The superintendent is authorized to work with district staff in making determinations regarding pupils who are proficient in courses in which the pupils are enrolled without regard to the aggregate hours of instruction provided. The superintendent is directed to make a final determination of proficiency for each pupil for each enrolled course, using district assessments, including class grades at a minimum, and reporting a full-time equivalent conversion of ANB for such pupils, based on the scheduled time ordinarily provided through the aggregate hours of instruction for such courses.

**Offsite Instruction:** The superintendent is authorized to work with district staff in providing instruction for pupils of the district. Such instruction may include any method or methods identified as appropriate by the superintendent, including but not limited to offsite instruction as defined and referenced in sections 20-1-101(5); 20-1-101(14); 20-7-118; and 20-9-311(11), MCA.

## **Staffing**

- 1. Question:** What does our district need to know about the Families First Coronavirus Act passed by Congress?

**Answer:** The Act does several things, including providing access to free COVID-19 testing, enhancing food assistance, increasing Medicaid funding, and providing paid leave and unemployment benefits to workers.

During this period of initial closure, schools are receiving state funding, so staff should be paid and should be working if they are directed by administration to report to work to support their students, parents and communities if they are able. The provisions related to leave for purposes of school closure are in effect so if an employee chose to take leave for any of the reasons noted in the legislation including school closure, the district would honor those leave requests.

These resources from the US Department of Labor are helpful in answering questions:

[Families First Coronavirus Response Act: Employee Paid Leave Rights](#)

[Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)

[Families First Coronavirus Response Act: Questions and Answers](#)

In order to satisfy the notice requirements in the Families First Coronavirus Response

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Act (FFCRA), a notice poster by the US Department of Labor must be placed in a conspicuous place on school district premises. Since most employees are not frequenting the premises, the notice requirements can also be met by emailing or direct mailing this notice to employees, or posting the notice on an employee information internal or external website.

The [poster can also be accessed here](#).

**2. Question: What information about diagnoses can be disclosed to the public and health officials?**

**Answer:** Please refer to the [Student Privacy Policy Office FERPA & COVID-19 document here](#).

When notifying parents, employees, students, or the public about COVID-19 related exposure, diagnosis, or associated risks among people in the school it is necessary to balance the individual's right of confidentiality against the public's right to know and district's obligation to preserve a safe school setting. A district may generally disclose to the public that a person in the school is subject to quarantine, has tested positive, or is otherwise absent for COVID-19 related reasons. Unless the individual staff member has waived their right of privacy, this notification will be completed in a way that does not identify the staff member. A student's identity should not be disclosed by the district unless there is an identified FERPA exception authorizing the district to do so that has been identified in consultation with legal counsel. MTSBA can assist with a review of a specific situation to determine how FERPA applies and the appropriate steps to take. Any notification that does occur can be accompanied by assurance that further information will be provided if available and the district is taking steps to manage the situation.

**3. Question: With the Governor's closure order, are staff still allowed to work on providing instruction to students?**

**Answer:** The Governor's order does not require you to stop the work of your staff, only to close schools. The Governor's order specifically contemplates that work will go on as school districts plan for how to adjust and ensure that the needs of students are met. You have both the resources and the freedom to have your staff work on offsite instruction resources and methods. To the extent that you have changes in working conditions, be sure to collaborate with the union and document their concurrence in any changes in working conditions through an MOU. **MFPE and MTSBA have collaborated and jointly endorsed [this Model MOU for districts' consideration](#).**

**(A)What is a Memorandum of Understanding (MOU sometimes also called MOA Memorandum of Agreement)?**

These are documents that waive/deviate/supersede specific provisions of the Master Contract. They are commonly used when the parties wish to discuss a very narrow topic, or when the parties agree that something in the CBA should be changed but would rather not open the full agreement. During the initial two

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weeks closure a sample MOU was draft protecting the party's rights during that limited window. This new revised MOU allows for those same terms to continue until such time as the closure is lifted or June 30th whichever comes first.

**(B) Does the Board need to approve this MOU?**

Yes, this MOU should go through all of the steps normally followed for adopting a contract or in this case an MOU.

**(C) Can we modify the MOU?**

This MOU is a draft sample document that both MFPE and MTSBA support. Like with any sample policy or sample contract language it is up to you to read, understand and adapt to your district's needs.

**4. Question: Should district employees stay home or report to work?**

**Answer:** The purpose of social distancing is to reduce gatherings of people and/or distance between individuals. Districts should allow staff over age 60 or with immunocompromised health to work from home when available. All other staff will play a critical leadership role in ensuring community services, including delivering meals to students, providing offsite instruction and cleaning the school buildings. The flexibility on determining work schedules remains with the district. You should seek the cooperation of the union, as you have obligations to bargain any changes in working conditions.

It is important to understand that the Governor's proclamation closed schools through April 10. However, the closure did not mean that school employees are excused from work during this time. MPFE is urging their members to report to work as directed by their local public schools as there is much to be done to provide for students and families during this time. As noted above, Montana schools will need to continue to work with state and national efforts to assure that meals are provided to families, that students have learning opportunities as may be made available – both immediately and in weeks to come, and that as critical community entities, schools are doing what they can to assist community efforts around the state.

Staff who are experiencing cold and/or flu symptoms should be instructed to exercise self-isolation and social distancing to minimize the spread/exposure of others to this virus.

**5. Question: Should we be laying our staff off during this time of school closure?**

**Answer:** The MT-PEC partners are encouraging schools to keep your employees working (unless, of course, they are compromised as a result of COVID-19). Laying staff off will cause greater stress in your communities. The individuals who are likely at the head of discussions on layoffs are your lower paid staff who need stability and a reassurance that they are valued and supported by your schools. There is much to be done at the local level to support your students, parents, staff who are on-site, and community members. Many of your communities are looking to your local schools (trustees, administrators, business officials, certified staff and classified staff) to lead them through this time of great need and uncertainty. This is a great moment in time for Montana's public schools to shine, to be leaders and to help your local

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communities wherever there is a need.

Here are just some of the legal considerations to be aware of if you are laying off staff:

- a. Have you been consistent in your issuance of written contracts for a specific term?
- b. For those employees covered by Montana's Wrongful Discharge Act legitimate business necessity (i.e. good cause) is required to terminate an employee. Given that the state is fully funding schools this could be a challenge.
- c. Do you want to risk discrimination complaints on the basis of gender, disability, pregnancy, etc.

Here are some practical considerations to be aware of if you are considering laying off staff:

- a. Do you have extra time on your hands to handle grievances, wrongful discharge act claims, etc.?
- b. With the change in school and community demands, can you repurpose employee duties to fill that need. Some possible duties may include:
  - i. Cleaning the school daily in areas where others have been working, i.e., teacher desks, electronic equipment, door-handles, restrooms, etc. should be cleaned at least once per day;
  - ii. Cleaning school buses that are being used to transport people to provide meals and/or instructional materials to students;
  - iii. Assisting with the processing and packaging of food for delivery to students;
  - iv. Connecting with students, i.e., if a student had a connection with a custodian or kitchen worker, that individual should be reaching out to that student as a support person (with, of course, the parent's knowledge);
  - v. If schools have any food that will perish without use, districts can be arranging to donate these food items to their local food banks/homeless shelters.
  - vi. Assisting with other community-based projects
  - vii. Collaborating with your local services, hospitals, nursing homes, etc.
  - viii. Study and complete district recommended online training for professional learning to enhance job-related skills and contributions to the district. (e.g. Montana Learning Hub courses, Emergency Services training, etc.)

**6. Question:** My district has a classified collective bargaining agreement. Does the CBA still rule for leaves, pay, etc. Some classified staff will be required to work (custodians, maintenance, etc.) but others won't. Do we need to bargain change in working conditions?

**Answer:** The CBA governs and any change in working conditions must be bargained. Consider repurposing duties, such as for a deep cleaning, delivery of meals, etc. With no loss of funding, you should have some flexibility. Wherever possible, all staff should continue to be paid and additional paid sick or administrative leave should be provided for those individuals under quarantine, sick due to COVID-19, or unable to work because of the need to take care of dependent children that are home because of school closure.

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**7. Question:** My district's classified staff are not collectively bargained. What is being recommend as a best practice in reference to these types of employees?

**Answer:** A District has wide latitude in reference to classified employees who are not collectively bargained. However, the District should be thinking about all of the tasks and duties that need to be performed to assist with school and bus sanitation measures, providing continued learning opportunities for students (if your district is educating students through on-line instruction) and providing meals to your students. In summary, districts can continue to pay and utilize classified staff during the Governor's two week public school closure.

## **Funding**

**1. Question:** Will schools still receive funding during the Governor's school closure?

**Answer:** The Governor's order says schools will receive full funding. The Governor has the authority to waive the penalties that would otherwise accrue for failure to meet the minimum aggregate hours of instruction. Per the Governor's directive, schools are required to submit a Plan of Action to fulfil the directive's criteria.

10-3-104. General authority of governor. (2) In addition to any other powers conferred upon the governor by law, the governor may:  
(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

**2. Question:** What do I need to know about transportation funding while students are engaged in offsite learning?

**Answer:** MTSBA developed [Model Policy 1900 – Temporary COVID-19 Policies](#) to establish a framework for temporary policies required to address the COVID-19 emergency. This should help school districts in keeping these temporary policies organized and segregated in a manner that will allow for easy adoption and self-executing dissolution once the emergency is dissolved/resolved.

The first temporary policy is [Model Policy 1901 - Use of Transportation Funds During Periods of School Closure](#). This Model Policy outlines the revised OPI transportation guidelines providing additional flexibility regarding the use of transportation funds. The policy states the board authorizes the administration to make expenditures in accordance with OPI guidelines to extend internet access and technology to ensure high quality offsite learning.

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The following questions can help guide districts in adopting and implementing the policies.

Can we hold an emergency meeting to adopt these policies or do we have to give 48-hour notice of a Special Board Meeting?

MTSBA recommends holding a special board meeting with 48 hours' notice to the public and trustees. These policies are intended to guide operations beginning next Monday onward so a special meeting, not emergency meeting, is the appropriate process.

What should the agenda item look like for our Board Meeting to adopt this policy? How should the motions be worded?

MTSBA recommends reviewing Policy 1310 and proceeding as follows:

If a district's Policy 1310 includes language that the board may adopt or amend a policy required by law after one reading, the board can adopt emergency policies after one reading as it is required by Governor's Executive Order.

If a district's Policy 1310 requires two readings to adopt or amend a policy the board may suspend Policy 1310 for the limited purposes of adopting or amending the policy in question after one reading. The process will work as follows:

Post an agenda and provide notice to the trustees that states:

1. *Consideration of suspension of District Policy 1310 for the purposes of consideration of adopting Policies 1900 and 1901 after one reading.*
2. *Consideration of adoption of Policies 1900 and 1901 after one reading for the purposes of establishing emergency policy framework and implementing OPI guidance on transportation funds.*

Approve motions as follows:

1. *I move the Board of Trustees of \_\_\_\_\_ School District suspend District Policy 1310 for the limited purpose of considering adopting Policies 1900 and 1901 after one reading. This motion is exclusive to the consideration of Policies 1900 and 1901 at the meeting held on \_\_\_\_\_, 2020, and will not apply to other meetings or topics.*
2. *I move the Board of Trustees of \_\_\_\_\_ School District adopt Policies 1900 and 1901 after one reading as permitted by the motion authorizing the limited suspension of Policy 1310. The purpose of adopting Policies 1900 and 1901 after one reading for the purposes of establishing emergency policy framework and implementing OPI guidance on transportation funds.*

How do we coordinate getting internet to those families who don't have it?

MTSBA recommends putting out a call for those without internet of a district-specified bandwidth to request assistance in accordance with Policy 1901.

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Do we pay for it directly through the internet provider or do we set up a reimbursement plan with families?

MTSBA recommends you attempt to negotiate a bundled price with the community ISP's to maximize efficiency. The OPI guidance also authorizes individual reimbursement, but it may be more difficult to manage.

Can we use transportation funds to also pay for staff internet service for those teleworking from home?

No. The applicable statute, OPI guidance, and Policy 1901 are for the exclusive use of providing assistance to students.

Can we use transportation funds to reimburse families for devices needed to provide off-site, on-line learning or, if need be, do we purchase additional equipment and lend it out to families?

The model policy contemplates that the district identifies, purchases and then loans equipment to student. There is no contemplation of districts purchasing equipment for students that will be owned by the student.

What other policies does the district need to implement this process?

MTSBA Model Policy [3612](#), [3612P](#), and [3612F](#) cover District-provided technology, networks, and internet. This will include any service or access provided by the district for off-site delivery through the transportation reimbursement process.

The parents are also expected to sign Policy 3612F binding them to monitor the access when not in the school setting. It also states it is for educational purposes only. So, student or parental use for commercial, personal, or political purposes will be a violation of the agreement. Further it says that abuse of the access may result in discipline or revocation of the privilege. If you would like to further tailor this form based on your envisioned process, please [contact MTSBA](#).

### **3. Question: What is the CARES Act passed by Congress?**

Answer: On March 27, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance and health care responses for individuals, families, and businesses affected by the COVID-19 pandemic. [AASA](#), [NEA](#) and [NSBA](#) have provided information on this bill. We will continue to update the education community as we learn more about the bill.

## **Board of Trustees Meetings**

### **1. Question: Can our school board convene electronically?**

**Answer:** The board can convene electronically but it has to be concurrent, such as a conference call or video conference. The definition of a meeting in [2-3-202](#) includes the

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convening of a quorum by electronic means.

If you are convening the meeting because of an unforeseen emergency, advance notice requirements under [20-3-322](#) do not apply. You can call the meeting on little or no notice, though we recommend you provide as much notice as you can under the circumstances.

- 2. Question:** How does a Board comply with the right of the public to participate in Board Meetings during public comment (on non-agenda items) or before the Board makes a decision if the meeting is held electronically?

**Answer:** Boards can satisfy the right of participation by providing a call-in number to your community. We do not recommend that you limit the number of people who could attend an in-person meeting of the board unless the county health department implements a gathering limit of general applicability.

- 3. Question:** Can the school board convene a meeting without compliance with the 48-hour notice requirements for special meetings?

**Answer:** If you are convening school board meetings because of an unforeseen emergency, advance notice requirements under [20-3-322](#) do not apply. You can call the meeting on little or no notice, though we recommend you provide as much notice as you can under the circumstances.

- 4. Question:** How should elections be handled during the COVID-19 pandemic?

**Answer:** OPI has developed guidance on elections. [You can find that guidance here.](#)

## **Student Meals**

- 1. Question:** Can schools continue to offer meals to students?

**Answer:** The USDA has issued a waiver to Montana and will provide flexibility to allow schools to continue providing schools meals during school closures. Schools can utilize staff to provide and deliver meals to students. You can read more about [the wavier here.](#)

OPI received approval of a request to have all schools across the state qualify for the Summer School Food Program. [OPI](#) has provided guidance on school nutrition options and recommend districts contact [your School Nutrition Specialist.](#)

## **Academics**

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**1. Question:** How should a district check equipment out to students?

**Answer:** MTSBA has developed a Student Device Check Out Form. You can [access that form here](#) for district utilization.

**2. Question:** Will there be standardized testing waivers?

**Answer:** The US Department of Education announced that schools closed due to COVID-19 will be granted waivers, following “a proper request,” for standardized testing for the 2019-2020 school year. You can read the US Department of Education [statement here](#).

**3. Question:** Are schools still required to meet all of the IEP requirements of students who qualify under IDEA?

**Answer:** If a district closes the schools entirely and provide no educational services to your general student population, you will also be relieved of the obligation to provide education to IDEA qualified students (not that we recommend this course of action). The [U.S. Department of Ed FAX](#) on this topic should help you figure out your obligations. It is likely you will continue to provide at least some educational services, and as such you will be continually obligated to provide education services to IDEA qualified. The Department of Education has published a supplemental [fact sheet found here](#).

**4. Question:** Are we able to have special education students come to the school for instruction, especially in an instance where the student has a 1:1 para or 2:1 para?

**Answer:** Not under the Governor's order. Schools are closed for purposes of instructing students for the next two weeks. Alternative arrangements will have to be made if you continue to provide educational services during the next two weeks.

**5. Question:** What if my district does not meet Maintenance of Effort (MOE) requirements this year?

**Answer:** School districts may be spending less on special education during the school closure period, and therefore may find themselves in a position of not meeting MOE requirements this year.

OPI recommends that districts consider spending state and local funds on special education expenditures that they might normally spend using federal IDEA-B grant funds. By doing so, they will be ensuring they meet MOE for the year and at the same time be saving IDEA-B funds for carryover into next year. They can carry over up to 100% of the federal funds.

OPI notes that next year, districts may have additional or compensatory services that can be paid for using IDEA-B grant money.