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## Memorandum

**To: County Superintendents**  
**From: W. Clayton Burch, State Superintendent of Schools**  
**Date: May 21, 2020**  
**Re: COVID-19 School Closure Finance FAQ 5.21.2020**

As counties transition from the closure of the 2019-2020 school year into their summer schedules, we must adjust the way we work once again. We are no longer under the Stay at Home Order which expired May 3, 2020, at 11:59 p.m. With the implementation of Governor Jim Justice's Safer at Home Order and the Comeback plan, businesses and government offices are cautiously returning to normal business operations. This includes county boards of education.

At the outset of the COVID-19 crisis, employees were afforded wide latitude to opt to stay away from the workplace because of actual or perceived health issues. We are now beyond that point. There are still leave protections in place for employees with health and child care issues, but those options require the employee to use leave. Superintendents should work with employees on a case-by-case basis to balance health and child care needs, including work at home options, against the need of the county to meet its obligations to students and staff. Some employees will be able to effectively perform work from home, others must be present on-site. Actual work needs must drive these decisions which must be applied in a consistent manner.

In all cases, superintendents must continue to implement work schedules and provide office environments in a manner consistent with the Centers for Disease Control (CDC) and West Virginia Department of Health and Human Resources (WVDHHR) guidelines. Those guidelines are likely to evolve throughout the summer months. Likewise, our FAQ documents will be updated accordingly. As always, I will keep you all advised as to any guidance or decisions that are forthcoming from the Governor, WVDHHR, or other agencies.

Thank you all for your continued support and for your constant commitment to the children of West Virginia.

## COVID-19 SCHOOL CLOSURE FINANCE FAQ 5.21.2020

**Note:** *These responses from the WVDE are based on the COVID-19 health emergency status as of today's date and are subject to change as this health emergency evolves. This guidance is general in nature and exceptions may be appropriate based on each county's unique circumstances.*

**Q1. Can county boards of education require school-based employees to report to work now that the Governor's Stay at Home Order has expired?**

**A1.** The Stay at Home Order expired on May 3, 2020, at 11:59 pm and West Virginians are now under a Safer at Home Order. Under the Safer at Home Order, county boards of education can ask employees to report to work to support the school closures for summer. For example, teachers may need to close out classrooms, students may need to retrieve belongings, etc.

The WVDE Coronavirus website ([wvde.us/COVID19](http://wvde.us/COVID19)) features guidance documents for completing tasks safely with proper social distancing in place. County boards of education must follow all Centers for Disease Control (CDC), West Virginia Department of Health and Human Resources (WVDHHR), and county health department required safety protocols, including social distancing.

<https://wvde.us/wp-content/uploads/2020/04/ClosingSchoolFacilities-Guidance-v4.pdf>  
<https://wvde.us/wp-content/uploads/2020/04/ItemRetrieval-v3.pdf>

County boards of education should exercise reason in outlining staff expectations for returning. Communicate expectations clearly in writing to all employees.

**Q2. Can county boards of education require central office personnel to report to work now that the Governor's Stay at Home Order has expired?**

**A2.** Yes, county boards of education can ask central office personnel to report to work under the Safer at Home Order. Many central office personnel periodically were already reporting in person to complete essential tasks even under the Stay at Home Order. County boards can expand this expectation in preparation for a fall re-entry plan. Exercise reason in creating a schedule for central office personnel to report to work and communicate expectations clearly in writing to affected employees. County boards of education must follow all CDC, WVDHHR, and county health department required safety protocols, including social distancing.

**Q3. Must a county board of education require all service personnel to report the same number of days/hours as during the return to work transition?**

**A3.** All service personnel within the same classification must be treated consistently and uniformly. There is no requirement to treat service personnel uniformly between different classifications. For example, the in-person services of a custodian will be ongoing and necessary while the services of a classroom aide will be specific and isolated. County boards must determine and prioritize the necessary tasks to continue operations and close schools for the summer. Boards should not require all service personnel to work the same in-person hours during this health emergency.

**Q4. How should county boards of education handle situations where employees are unable or unwilling to report to work after being asked to return for in-person duties?**

**A4.** Handle cases of unable/unwilling employees on a case-by-case basis. County boards of education should have detailed discussions with employees regarding why the employee is unable/unwilling to report to work. When appropriate, work with affected employees to create alternate schedules and reasonable accommodations. If the job can continue productively from home in a way that does not negatively impact office or school functions, that option remains.

If, after exploring all options for alternate schedules and reasonable accommodations an employee is still unable or unwilling to report to work, the employee should be assessed leave. Depending on the reason for the continued absence, an employee may be able to take available personal leave (sick or without cause) or annual leave. If an employee does not have leave available, the employee should be docked pay for each day not worked.

In some circumstances, the provisions of the Families First Coronavirus Response Act (FFCRA) may apply. FFCRA created two types of additional federal leave that is available to all public employees: (1) Paid Sick Leave under the Emergency Paid Sick Leave Act and (2) Expanded Family and Medical Leave under the Emergency Family and Medical Leave Expansion Act. These new types of leave became effective on April 1, 2020, and extend through December 31, 2020.

Generally, FFCRA provides employees of covered employers the following:

- Two weeks (10 days – up to 80 hours) of paid sick leave where the employee is unable to work or telework:
  - Because the employee is quarantined pursuant to a federal, state, or local government order (regular rate of pay)
  - Because the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (regular rate of pay)

- Because the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis (regular rate of pay)
- Because the employee has a bona fide need to care for an individual subject to quarantine pursuant to Federal, state, or local government order or the advice of a healthcare provider (2/3 of the regular rate of pay)
- Because the employee is caring for a child (under age 18) whose school or child care provider is closed or unavailable for reasons related to COVID-19 (2/3 of the regular rate of pay)
- Because the employee is experiencing any other substantially similar conditions that may arise as specified by the secretary of WVDHHR (2/3 of the regular rate of pay)
- Up to an additional 10 weeks of paid expanded family medical leave at 2/3 of the employee's regular rate of pay:
  - Where an employee who has been employed for at least 30 days is unable to work due to a bona fide need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

**Q5. Can county employees volunteer without pay to assist with summer meal distributions?**

**A5.** Under the Fair Labor Standards Act (FLSA), “an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered is considered to be a volunteer for such hours. Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer. An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer. The phrase ‘same type of service’ means similar or identical services... after consideration of all of the facts or circumstances in a particular case, including whether the volunteer series is closely related to the actual job duties performed by or responsibilities assigned to the employee.”

This FLSA language means that a cook must be compensated and cannot volunteer to distribute meals over the summer, but a mechanic, teacher, custodian, etc. can volunteer their services because food distribution is not related to their job duties.

If a county board of education permits employees to volunteer with summer meal distribution, we recommend that employees sign a form certifying that they are freely offering their services and are aware their time is non-compensatory volunteer work. Consider reserving a place on the certification form to document review of each employee's job duties to confirm the duties

do not constitute “same type of service,” which would preclude the employee from volunteering under FLSA.

**Q6. Will school closures due to COVID-19 impact the calculation of the HB206 Attendance Incentive Bonus for classroom teachers?**

**A6.** Because classroom teachers have generally not been assessed leave during the school closures (after March 13, 2020), the school closures should not adversely impact the eligibility of classroom teachers for the Attendance Incentive Bonus. In specific situations, such as medical leaves of absence, employees may have still been charged leave during the school closures and such leave would be considered in the eligibility calculation for the bonus.

**Q7. Can employees with 240 day contracts carry any of their 21 “non-paid” days into the 2020-21 school year?**

**A7.** No, due to the nature of the employment contract, an employee’s salary is based on 240 days worked between the dates of July 1 to June 30 annually. Allowing an employee to carry any of their “non-paid” days into the subsequent school year would mean that the employee would work more than 240 days during one fiscal year and less than 240 days in the subsequent year without an adjustment in salary between fiscal years. This could potentially lead to violations of the Fair Labor Standards Act.