



New Jersey School Boards Association

The 180-Day Requirement: Guidance on Rescheduling School

New Jersey School Boards Association recognizes that many districts have had to cancel school days due to the effects of inclement weather. The Association has provided this general information to address some of the districts' questions and concerns about meeting the 180-day requirement, and revising the school calendar to make up for lost days.

Must a district be open for students 180 days? Yes. Under *N.J.S.A. 18A:7F-9*, schools must be in session for 180 days to receive state aid:

"In order to receive any State aid pursuant to P.L.2007, c.260 (C.18A:7F-43 et al.), a school district, county vocational school district, or county special services school district shall comply with the rules and standards for the equalization of opportunity which have been or may hereafter be prescribed by law or formulated by the commissioner pursuant to law, including those implementing P.L.1996, c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or related to the core curriculum content standards required by P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with any directive issued by the commissioner pursuant to section 6 of P.L.1996, c.138 (C.18A:7F-6). The commissioner is hereby authorized to withhold all or part of a district's State aid for failure to comply with any rule, standard or directive. No State aid shall be paid to any district which has not provided public school facilities for at least 180 days during the preceding school year, but the commissioner, for good cause shown, may remit the penalty."

Has the Department of Education provided guidance on how districts may meet their obligations to provide school for 180-days? Several letters from the Department of Education dating back to 1994 and 1998 provided guidance to schools during an earlier time when there were also school closures due to inclement weather. These letters will be referred to as "DOE letters." The DOE letters are not necessarily legally binding on the current administration but are examples of how previous administrations have handled the issue.

What is the school year? Under *N.J.S.A. 18A:36-1*, the school year for all schools in the public school system shall begin on July 1 and end on June 30. Therefore, the 180-day requirement must be met by June 30.

What is a day? The DOE letters indicate that to meet the 180-day requirement, a day must include 4 hours of pupil contact time, excluding lunch and recess, and the pupil contact time requires actual instruction, which does not include travel between classes. This is consistent with current administrative code:

N.J.A.C. 6A:32-8.3 School attendance

- "(a) For purposes of school attendance, a day in session shall be a day on which the school is open and students are under the guidance and direction of a teacher or teachers engaged in the teaching process. Days on which school is closed for such reasons as holidays, teachers' institutes and inclement weather shall not be considered as days in session.
- (b) A school day shall consist of not less than four hours of actual instruction, except that in an approved kindergarten one continuous session of 2 1/2 hours may be considered as a full day.
- (e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods."

Under what conditions will penalty of losing state aid for failing to meet the 180-day requirement be waived? The statute says that "the commissioner, for good cause shown, may remit the penalty." One of the DOE letters indicates that if all efforts to achieve make-up days have been exhausted, a waiver process may be used. The letters indicate that there must be a formal resolution passed by the board requesting the waiver. In addition to the list of criteria to be weighed by the (executive) county superintendent in order to obtain the waiver, the DOE letters state that, in the case of natural disasters the board must indicate the steps it has taken to acquire physical facilities or other resources to meet the 180-day requirement.

The waiver has been rarely granted.

May a board revise its calendar to meet the 180-day requirement if it must close due to inclement weather? A board has the managerial prerogative of extending the school year or opening on days previously designated as closed for students, such as holidays, staff development or vacation days. Rescheduling the calendar is not negotiable. *Piscataway Ed. Assn. v. Bd. of Ed.*, 307 *N.J. Super.* 263 (App. Div. 1998) cert den. 156 *N.J.* 385 (1998).

However, while changing the calendar is a non-negotiable managerial prerogative, case law holds that there is an obligation to negotiate the impact of changes to the school calendar. *Piscataway*. The negotiability of impact issues is determined on a case-by-case basis based on a balancing test enunciated in *Woodstown-Pilesgrove Board of Education*, 81 *N.J.* 582 (1980). The board may have an obligation to negotiate over impact issues so long as, on balance, negotiations over those issues would not significantly interfere with the related prerogative (in this case setting of the school calendar). The purpose of the negotiation



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continued

would be to ameliorate the effects of a changed calendar, which might include such factors as compensation to staff for lost employment opportunities, trip deposits and altered family holiday plans.

If a board's calendar already identifies specific days that will be used in the event there is a need to make up school days because of school cancellations, this would mitigate against any obligation to negotiate over the impact of using those designated days. However, where the board uses days that have not been designated as reserve days in its calendar, the board would have an obligation to negotiate over the impact of revising its calendar. For example, a board has been found to have an obligation to bargain over such impact issues as the loss of non-refundable tickets. *Piscataway Twp. Board of Education*, PERC No. 99-39.

PRACTICAL CONSIDERATIONS

Districts will likely have an obligation to negotiate over the impact of changing the school calendar to hold school on the week originally scheduled for the spring or winter breaks, for instance. The impact of such changes will likely be more dramatic if the district's calendar included the entire week off. The potential impact of calendar changes on staff is reduced where the calendar change is made in sufficient time for teachers to cancel reservations without any penalty. Boards may also consider adding days in June.

Saturdays may be scheduled only with Executive County Superintendent (ECS) approval, according to the DOE letters. The DOE letters also indicate that, while it is not illegal to do so, some attendance problems and religious issues may arise. The DOE letters further indicate that Sunday will not be approved as teachers/students cannot be compelled to attend.

Can instructional hours be added to one school day to create an extra day? An AG opinion from 1994 indicates that a board may not add on an additional 4 instructional hours to a regular school day to create an extra day, nor may a board have two 4-hour sessions in one day. Where a board has half-day kindergarten, allowing

two sessions of 2.5 hours each in one day would be permitted only with ECS approval. This opinion may not necessarily reflect the current administration's view.

A board must remit its revised calendar as information to the county office.

Can school be held on a legal holiday? When planning a make-up day on a legal holiday (*N.J.S.A. 36:1-1*), boards must keep in mind that teachers are not required to perform duties on any day declared by law to be a public holiday. However, staff may be cooperative in making up the school days on public holidays in order not to go into the summer or spring break. Even so, an individual teacher has the right not to come to work on a public holiday, and this may cause staffing problems.

Can school days be held after graduation? The NJSBA has received information that a local district may hold graduation exercises prior to the end of the school year provided that diplomas are not distributed until the completion of all state- and locally-mandated instructional days.

Students should be reminded that the district attendance policy remains in effect between the graduation ceremony and the final day of the school year and that absences will be assessed pursuant to that policy. Districts should contact the ECS for additional information. Previous DOE letters also indicate that having a separate makeup schedule for seniors would require approval of the ECS.

As with any calendar change, the board must consider all factors including the number of staff expected to be absent, the cost and availability of substitutes, the continuity of instruction, labor relations issues, school temperature in June, etc. When a board of education makes a decision to hold school on certain religious holidays, one consideration is the number of teachers that may be expected to be absent and the cost of substitutes.

No information contained in this document should be construed as legal advice.

This document is for informational purposes only.
Please consult your board attorney for legal advice.