



## **COVID-19 PANDEMIC EMERGENCY SCHOOL CODE LEGISLATION**

**Prepared by the PSEA Legal Division**

**April 1, 2020**

On March 6, 2020, Governor Wolf declared a disaster emergency in order to help contain, prevent the spread of, and address the effects of COVID-19, the novel coronavirus that was ultimately declared by the World Health Organization to be a global pandemic. As part of the Commonwealth's response, Governor Wolf has signed into law Act 13 of 2020, formerly Senate Bill 751. Act 13 of 2020 amended the Pennsylvania Public School Code of 1949 (School Code) to add a new Section 1508.1, entitled "Pandemic of 2020," to provide emergency relief for school employees and school entities facing the quarantine and school closures necessitated by the COVID-19 pandemic.

### **What employees and schools are covered by the new law?**

New Section 1508.1 provides relief from School Code mandates to public school employees and to public, nonpublic, and home school education entities serving students in pre-kindergarten through grade 12. Section 1508.1 covers all public school entities, defined as school districts, intermediate units, area career and technical schools, and charter schools, including regional and cyber charter schools.

### **Does Section 1508.1 waive the 180-instructional day requirement?**

Yes. Section 1501 of the School Code requires all public school entities to be kept open for at least 180 instructional days per school year. Section 1508.1 waives this requirement immediately.

### **How long might schools be closed?**

Section 1508.1 allows the Secretary of Education to order the closure of all public school entities until the threat to health and safety caused by the COVID-19 pandemic has ended. Currently, public school entities in Pennsylvania are closed indefinitely. Secretary Pedro Rivera has stated publicly, however, that in no event will the 2019-2020 school year extend beyond June 30, 2020. See Philadelphia Inquirer, *Despite coronavirus closures, no school past June 30 for Pa. students; Philly may buy 50,000 Chromebooks*, March 25, 2020.<sup>1</sup>

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<sup>1</sup> This article may be read here: <https://www.inquirer.com/news/coronavirus-pennsylvania-schools-distance-learning-philadelphia-hite-chromebooks-20200325.html>.

**Must schools continue to offer instruction during the closure?**

Yes. Section 1508.1 requires each public school entity to make a good faith effort to plan to offer continuity of education to students using alternative means during the period of closure. The Pennsylvania Department of Education must provide guidance to school entities, and intermediate units may provide technical assistance. Public school entities must submit their plans to PDE and must post their plans on their publicly accessible Internet websites.

**Can schools use flexible instructional days to educate students during the closure?**

Possibly. Section 1506 of the School Code already allowed school districts to use a maximum of five flexible instructional days per school year, but only if the school district applied to PDE to do so by September 1, 2019. However, new Section 1508.1 allows the Secretary to increase the number of flexible instructional days that school entities may institute for the 2019-2020 school year to a maximum number of days determined by the Secretary. In addition, Section 1508.1 allows the Secretary to waive the September 1, 2019, application deadline for flexible instructional days. This will allow school entities that did not previously intend to use flexible instructional days to apply to use them now, due to the long-term closure.

**Will a public school lose any state or other funding for the period of the closure?**

No. Under Section 1508.1, a public school entity that was closed as a result of the COVID-19 pandemic will not receive less subsidy payments, reimbursements, allocations, tuition, or other payments from PDE or another school entity than the school entity would otherwise be entitled to receive for the 2019-2020 school year had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not been waived, or had the Secretary not taken one of the actions he was authorized to take under Section 1508.1. For the time period a charter school, regional charter school, or cyber charter school is closed due to the COVID-19 pandemic, the charter school, regional charter school, or cyber charter school will receive tuition payments based upon its enrollment as of March 13, 2020.

**Will public school employees lose pay due to the closure?**

No. Under Section 1508.1, no employee of any public school entity who was employed as of March 13, 2020, will receive more or less compensation than he or she otherwise would have been entitled to receive from the school entity had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not been waived, or had the Secretary not taken one of the actions he was authorized to take under Section 1508.1.

**Will public school employees lose any retirement benefits due to the closure?**

No. Under Section 1508.1, no employee of any public school entity who was employed as of March 13, 2020, will receive more or less credit, or contribute more or less, than he or she would otherwise have contributed pursuant to the Public School Employees' Retirement Code had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not been

waived, or had the Secretary not taken one of the actions he was authorized to take under Section 1508.1.

**Will students still be required to take standardized tests in the 2019-2020 school year, including the PSSA tests and the Keystone Exams?**

No. On March 19, 2020, the Secretary announced that all PSSA testing and Keystone Exams would be cancelled for the 2019-2020 school year due to the school closure made necessary by the COVID-19 pandemic. *See Pennsylvania Department of Education, Pennsylvania Department of Education Cancels Statewide Assessments, March 19, 2020.*<sup>2</sup>

Because statewide testing remains a federal requirement under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (together, ESSA), Section 1508.1 of the School Code also required the Secretary to apply to the United States Department of Education (USDOE) for a waiver of ESSA's testing and accountability requirements for the 2019-2020 school year. Under Section 1508.1, the Secretary was not required to consult with the General Assembly before making this waiver request, as would normally be required under Section 126 of the School Code. By letter dated March 27, 2020, the USDOE has approved PDE's waiver request.

**How will educator evaluations be affected, in the absence of standardized testing?**

Section 1508.1 allows the Secretary to waive the requirement in Section 1123 of the School Code that performance data be included in a professional employee's performance rating.

**Will public schools still be required to provide special education students with a free and appropriate public education (FAPE) under the federal Individuals with Disabilities Education Act (IDEA)?**

Yes. Under Section 1508.1, each school entity must provide written notice to the parent or guardian of each student who receives services under an individualized education program under the IDEA of the school entity's plans for ensuring the student receives FAPE as required under IDEA.

**How does Section 1508.1 affect career and technical education (CTE) programs?**

First, the number of hours required for CTE programs may be reduced. Section 1508.1 allows the Secretary to waive the minimum total number of hours required for a CTE program.

Second, CTE students may not be required to take the NIMS (National Institute for Metalworking Skills) assessment or the NOCTI (National Occupational Competency Testing Institute) exam for the 2019-2020 school year. Section 1508.1 allows the Secretary to waive these requirements.

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<sup>2</sup> See <https://www.media.pa.gov/Pages/Education-Details.aspx?newsid=813>.

**Will Section 1508.1 affect pre-kindergarten?**

Possibly. Regulations of the State Board of Education require a pre-kindergarten program to offer at least 180 days of instruction in order to satisfy “Pre-K Counts” requirements. However, Section 1508.1 allows the Secretary to waive this requirement.

**Will student teachers still be required to satisfy a 12-week student teaching requirement?**

Possibly not. Section 1508.1 allows the Secretary to waive the 12-week student teacher requirement under the regulations of the State Board of Education for educator preparation programs that are unable to meet the regulatory requirement due to the COVID-19 pandemic.

**Does Section 1508.1 provide any protections for those employees who are asked to clean buildings during the COVID-19 outbreak?**

Yes. Section 1508.1 requires each public school entity to provide any employee who is responsible for cleaning school facilities as a result of, or during the threat to health and safety caused by, the COVID-19 pandemic with appropriate cleaning materials and protective clothing and gear as recommended by the Centers for Disease Control and Prevention. *See Centers for Disease Control and Prevention, Cleaning and Disinfecting your Facility: Everyday Steps, Steps When Someone is Sick, and Considerations for Employers, March 27, 2020.*<sup>3</sup>

**What will happen if an educator is unable to satisfy continuing education requirements?**

For each professional educator with an active certification as of March 27, 2020 (the effective date of Act 13), Section 1508.1 extends the current continuing professional education compliance period by one year.

**Does Section 1508.1 address school bus transportation?**

Yes. Section 1508.1 allows each public school entity to renegotiate a contract for school bus transportation services to ensure contracted personnel and fixed costs, including administrative and equipment, are maintained during the period of school closure. During the period of school closure, the school bus transportation contractor must submit weekly documentation to the public school entity that its complement levels remain at or above their level as of March 13, 2020, in order to continue being paid.

Also under Section 1508.1, if a public school entity continues to pay a school bus transportation contractor or operates its own school bus transportation, the school entity will be eligible for reimbursement from PDE at a rate the school entity would have received had the COVID-19 pandemic not occurred, had the minimum instructional days requirement not been waived, or had the Secretary not taken one of the actions he was authorized to take under Section 1508.1.

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<sup>3</sup> Guidelines of the Centers for Disease Control and Prevention may be read here: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>.

### **What if a public school entity needs relief from other laws or regulations?**

Section 1508.1 allows the governing body of a public school entity to apply to the Secretary for a waiver of any provision of the School Code, regulations of the State Board of Education, or standards of PDE, excluding those relating to third-party services, causes for suspension, and persons to be suspended, if the waiver is directly related to the school entity's staffing needs or impacts the school entity's instructional program or operations as a result of the COVID-19 pandemic. If a school entity makes such a request, the Secretary must approve or disapprove the request within 30 days, and the school entity may not appeal the Secretary's decision.

### **Does Section 1508.1 affect private schools?**

Yes. Section 1508.1 allows the governing body of a nonpublic school to close the school due to the threat to health and safety caused by the COVID-19 pandemic and also waives the minimum instructional requirements for nonpublic schools set forth in Section 1327(b) of the School Code.

### **Does Section 1508.1 affect home education programs?**

Yes. Section 1508.1 waives the following requirements that normally apply to home education programs:

- The minimum instructional time requirements of Section 1327.1 of the School Code.
- The requirement to administer a nationally normed standardized achievement test or statewide test under Section 1327.1(e)(1) of the School Code.
- The requirement to conduct annual evaluations under Section 1327.1(e)(2) and (h.1) of the School Code.

### **Will payments to private or nonpublic schools that serve students with disabilities be affected by the COVID-19 closures?**

No. Section 1508.1 provides that a private or nonpublic school that was closed due to the COVID-19 pandemic will not receive more or less payment from school entities for any student placed by a school entity and enrolled as of March 13, 2020, as long as the private or nonpublic school is offering continuity of education during the period of closure.

In addition, a private residential rehabilitative institution that was closed due to the COVID-19 pandemic will not receive less payment from school entities or from the Commonwealth for any student enrolled in the institution as of March 13, 2020.

### **What if regulations of the State Board of Education are inconsistent with Section 1508.1?**

Section 1508.1 takes precedence over any regulation that conflicts with it.

**When did the new law take effect?**

Section 1508.1 took effect immediately upon signature by Governor Wolf on March 27, 2020. However, certain parts of Section 1508.1, including those that protect employees' compensation and retirement benefits, apply retroactively to those employees who were employed as of March 13, 2020, the date on which Governor Wolf ordered the statewide closure of schools in Pennsylvania.

**Will Section 1508.1 expire after the COVID-19 crisis is over?**

Yes. This relief applies only to the 2019-2020 school year.

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