Electronic Delivery of Instruction (Live or Recorded)

NYSUT believes in the education of the whole child.

Remote learning, in any form, will never replace the important personal connection between teachers and their students that is a critical part of the teaching and learning process.

As school districts move forward with educational plans for this fall, a number of districts are planning to offer electronic delivery of instruction, both live-streamed and recorded. This has raised a number of labor and employment questions.

- The decision to engage in electronic delivery of instruction, whether real-time or recorded, is a district judgment that speaks to a district's determination on how to accomplish its mission. This applies whether the instruction is recorded in a classroom or from a remote location.

- A union can use its powers of persuasion, community organizing, and reliance upon other strategies to attempt to influence or change a district's decision, but, ultimately, if a district decides to move forward with electronic delivery of instruction, there is no legal basis to challenge the decision. However, as discussed below, it will be a proper issue for Impact Bargaining.

- While some educators have raised privacy concerns when recording occurs in a classroom, any liability that may exist under FERPA, IDEA, Education Law 2-d, or other privacy law, rule or regulation is borne exclusively by the district, if the teacher is using district technology and directions for providing the instruction.

- State Education Department guidance on reopening schools does not require electronic delivery of instruction, nor does it prohibit it. It simply allows districts to use it if they wish to do so.

- Both the SED and Department of Health guidance require that at-risk students and employees' needs are considered in the development of the re-opening and continuity of learning plans. Electronic delivery of instruction is one way to accomplish that goal.

Go to *nysut.org/reopen* for a variety of guidance documents on health and safety considerations, instructional issues and advice for local leaders, as schools move forward with educational plans for this fall. For more on remote/distance learning, see NYSUT's "Instructional Issues that Must Be Answered."

Locals are strongly encouraged to use this document in concert with NYSUT's Health & Safety Resource Guide for Reopening Schools and the Template Memorandum of Agreement for reopening. While each document provides very valuable guidance, these documents, when used together, will provide the most complete support available at this time.

What issues are subject to Impact Negotiations?

- All aspects of electronic delivery of instruction, as they relate to employment issues, are proper subjects for Impact Bargaining.

- If an employer unilaterally determines that electronic delivery of instruction will occur, the local union must send a letter demanding to immediately engage in Impact Negotiations. Local union leaders are strongly encouraged to work closely with their NYSUT Labor Relations Specialist.

- All the following items are proper subjects for Impact Negotiation:

  - Observation/evaluation of a teacher's performance electronically or through recording

    - Storage and retention of any recording for use in observation/evaluation

    - Review of length of session to determine "time on task," tardiness, etc.

    - Differentiation of lesson plans, grading, homework assignments, etc., if the impact of differentiated approaches results in significantly more time expended.

    - Impact on teaching preparation sessions.

    - Impact on length of instructional day.

    - Inability for any improperly obtained recording to be utilized against a teacher.

    - Prohibition against using electronic delivery of instruction, especially recorded lessons, as a basis for a reduction in sections leading to a reduction in workforce.

  - Prohibition against a district using a teacher's recorded lesson to generate commercial revenue, or to generate revenue without additional compensation to the teacher.

- If the district refuses to bargain over the Impact, that refusal would be the basis of §209.a-1(d) Improper Practice charge.

- In analyzing the success of an Impact charge there are a few factors to consider:

  - Did the district unilaterally require a change in work that goes to the core of job responsibilities?

  - If so, does that change result in new ways where the employer can gather information to potentially use as a form of discipline?

  - Alternatively, (or in addition) does the impact of the new work result in an identifiable increase in work impacting the time/value of money, increasing the overall time needed to do the job correctly? The impact cannot be "de minimus;" it needs to be recorded and demonstrated as a meaningful change.

- Any shift to electronic instruction that is imposed by the district should trigger the discussion of evaluation/observation aspects, unless there is bargaining or existing contract language that already prohibits that use.

- Defining workload impact will be very fact specific and could be a situation where the impact is very high at first and gradually declines, which could impact the viability of a charge. The local should work closely with field staff to be very clear about the facts.

Best Practices for Electronic Delivery of Instruction and Remote Learning:

- As discussed above, the district ultimately has the final say, and the legal liability on these issues. However, if your district is interested in recording lessons, consider pre-recorded lessons that guarantee both student and teacher privacy.

- Districts and locals should also identify potential issues with this type of instruction and be prepared with contingency plans to address problems/concerns. Issues could include:

  - Loss of live feed

  - Internet access problems for teachers and students

  - Ensuring privacy consistent with Ed Law 2-d

  - Availability of necessary software for teachers and students

  - Making up missed lessons due to technology disruptions

  - How to use "lessons learned" feedback to address problems or refine instruction

- Consider streamlining the number of different tools that students will be expected to utilize after an assessment of the effectiveness of digital tools, platforms, and resources utilized during school closures. Provide both support and flexibility to students when designing remote/blended/online learning experiences.

- Work with colleagues, students, and families to identify multiple effective structures and supports. Open deadlines, ambiguous expectations, and/or lack of direct support from a qualified educator are difficult conditions for students and families. Students who participated in the Regents' Reopening Task Force Meetings indicated that students who felt supported by their teachers and schools were more likely to have increased levels of engagement during remote learning.

- Examples of structures and supports could include, but are not limited to, consistent methods of communication and times that communications are sent, predictable deadlines, and the provision of instruction in multiple modalities (recorded video, recorded audio, written translation).

- Provide flexibility to lower stress and increase equitable access for students and families. Older students may be taking on responsibilities such as caregiving or working outside of the home and may not be available during traditional school hours. Younger students may not be supervised by a parent or guardian during the school day, and their caregivers may not be able to effectively guide remote/online instruction.

  - One area requiring flexibility is printing. Many students do not have access to a printer, especially if libraries are closed. Consider alternative learning activities that do not require students to print.

  - Other examples of flexibility include, but are not limited to, weekly instead of daily deadlines and choice boards with activities requiring varied levels of technology access. For students with extremely limited internet access, schools may wish to provide materials and assignments on a flash drive or other file storage device.