

Updated Information on 180 Instructional Day Requirement



Fact Sheet No. 20-07

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Declaration of State of Emergency

New legislation has been enacted into law that modifies the rules relating to the 180 day instructional requirements. Chapter 605 of the law of 2019 was signed by the Governor on December 6, 2019. Chapter 605 provides if schools are closed on a day(s) when a state or local declaration of a state of emergency has executed, the district will not have to make up that day(s) in order to comply with the 180 day requirement. This legislation has a retroactive effective date of July 1, 2019 and therefore applies to any states of emergency declared during the 2019-20 school year.

Temporary Waiver from Instructional Hour Requirement

The Board of Regents approved final regulations in October 2019 that created a one-time waiver option for schools that were unable to comply in the 2018-19 school year with the new instructional hour regulations due to certain circumstances. A district had until November 15, 2019 to apply for a waiver from the instructional hours regulations if the district could not comply with those regulations in 2018-2019 due to safety issue and/or other scheduling challenges. This waiver will cover the 2018-19, 2019-2020, 2020-21, and 2021-22 school years.

In order to qualify for the waiver a district must:

- *certify that the district will be in session for at least 180 days;
- *certify that the instructional hours for the 2018-19 and 2019-20 school years will be at least equal to 2017-18 instructional hours;
- *certify that for the 2020-21 and 2021-22 school years the total number of school buildings in the district that comply with the instructional hours regulations will increase annually by no less than one-third so that all schools will be in full compliance by 2022-23;
- *describe the safety and/or scheduling challenges that prevented compliance; and
- *provide a plan as to how the district will be in full compliance with the instructional hour requirement by the 2022-2023 school year.

Further, all school districts (even those not seeking a waiver) must now submit to SED on an annual basis a completed calendar worksheet for each grade level. In the past the Superintendent has signed only a general certification that the District complied with state laws and regulations regarding the school calendar and instructional time.

Link to the Regents item establishing the waiver process:

<http://www.regents.nysed.gov/common/regents/files/1019brca9revised.pdf>

Instructional Hour Requirement History

The Board of Regents at their September 2018 meeting approved regulations that govern how school districts must provide the statutorily required 180 minimum days of instruction. These regulations do not change the requirement to have a minimum of 180 instructional days. These new regulations are in effect for the 2018-19 school year.

While there has been some discussion in the media that there may be proposals to allow districts to hold instructional days during July and August these new regulations do not allow for such a change.

Annual Instructional Hour Requirement

The new regulations alter the calculation of the instructional hours needed to comply with the 180 day requirement. Previously, the Commissioner's regulations and related guidance constructed a weekly minimum instructional hourly requirement in order for all five days in a school week to count toward the 180 instructional day requirement.

The new regulations change to a yearly instructional hour construct that requires grades K-6 to have a minimum 900 hours of instruction per year and grades 7-12 to have a minimum of 990 instructional hours spread out over a minimum of 180 days. A half-day Kindergarten program is required to have 450 instructional hours over a minimum of 180 days.

Definition of Instructional Time

An instructional hour is defined as an hour, or fraction of an hour, during which students receive instruction from a certified teacher, or a period of time where students are doing supervised study activities such as completing or reviewing homework. The regulations now expressly state that lunch periods shall not count as instructional time. Per an SED response to a public comment, recess periods may be counted as instructional time if the recess periods contain supervised activities related to Part 135 of the Commissioner's Regulations for physical education.

While we are still awaiting field guidance from the Department, SED has produced a spreadsheet to provide districts with the methodology to calculate their instructional time over the course of a school year. This spreadsheet (a link to this document is at the end of this Fact Sheet) indicates that "passing time" between periods and homeroom do not count as instructional time. In the past SED had only specified that recess and lunch were excluded from a typical school day to determine the length of the "instructional day."

Delays and Early Releases

The regulations allow districts to count up to two hours toward the instructional hourly requirement for any delay in the start of the school day (or an early release) due to adverse weather conditions, water shortage etc. The Superintendent must attest to the adverse situation / weather that caused the delay (or early release) to the State Education Department. Therefore, if a district operated with a three hour delay due to adverse weather conditions the district could claim only two hours of the three hour delay as instructional hours.

Superintendent Conference Days

Districts may have up to four Superintendent Conference days per year as authorized by state law. These do not need to be used in full day increments and the associated hours for these Conference days may be split up among more than four calendar days.

The new regulations convert the current four day allotment for Conference days into a total hour amount that can be used for Conference days in a school year. The regulations provide that districts may use the average scheduled hours for a school day multiplied by four to compute the total amount of hours for Conference days. Example: If a school building has a six hour instructional day then the school may use 24 hours for Conference time in a given school year (six hours multiplied by four days).

Also, consistent with past practice districts may use Superintendent Conference days during the last two weeks of August subject to collective bargaining agreements.

Regents Exams and State Assessments

When Regents exams are administered and on rating days, a district may count the greater of the instructional hours it provides on non-examination days or the actual testing time towards the instructional hour requirement for the respective grade level for the Regents exams being administered. If grades 7-12 are housed in the same building, then students may be excused if their class schedules would be disrupted by the administration of the Regents exams. The days when the state tests for grades 3-8 ELA and math assessments are administered are days that count toward the instructional hour and 180 day requirement.

Existing Collective Bargaining Agreements

The regulations provide that no existing collective bargaining contract need be altered to comply with the new regulations. However, this does not absolve a district from complying with the 180 day statutory requirement and these regulations. As a result, if a district has less than 900/990 instructional hours in a year and if the contract is not altered then the district will incur a financial penalty in the 2019-20 school year. State law provides that school districts will lose 1/180th of their Foundation Aid for each day the district is short of 180 instructional days. Future collective bargaining agreements will need to comply with these regulations.

A link to the SED 180 day 2020-21 calendar spread sheet is attached below.

www.nysut.org/2020-21modelcalendar