

Alternatives for Ensuring Educational Continuity for Montana's Public Schools Addressing COVID-19 Concerns

By Lance Melton, MTSBA Executive Director, March 12, 2020

With the recent increase in the number of those infected with COVID-19, MTSBA has fielded an increasing number of questions regarding the options for students, families and public school leaders seeking to ensure a safe and effective learning environment in Montana's public schools. At the post-secondary level over 100 colleges nationwide have canceled in-person classes and moved to online instruction, including all MUS campuses here in Montana.

Our members have also contacted MTSBA to ask about the extent of school board authority to change the instructional methods or delivery models of their curriculum to ensure that students continue to learn at effective levels while also slowing the spread of COVID-19.

There are a host of issues that school boards and their staff leadership teams should strategically discuss now to ensure a deliberate, well-thought course of action. Examples include, but are not necessarily limited to:

1. Impacts on families relying on public schools to help with meals and in-school and after school care. Any sweeping changes in the delivery model will undoubtedly fall most heavily on pupils who are already at-risk. School Boards and their staff leadership teams should give consideration to how the public schools can mitigate inconvenience and disruption to families with children being educated in the district in the case of a shut down or conversion to online learning.
2. The Digital Divide – Even in this day and age, not every student has reliable access to the technology (e.g., hardware, software, internet access, etc.) necessary to learn effectively in a distance learning environment. Districts can evaluate availability and prioritize checking out district technology to students without technology access at home.
3. Impacts on school district employees, including licensed staff (teachers and administrators) as well as classified staff (e.g., bus drivers, duty aides, food service staff, custodians, building maintenance, etc.). There are very few employees in any industry who can afford to do without a paycheck and ensuring stability in this regard will be an important consideration for a leadership team discussing its options. Correspondingly, with the level of public employee collective bargaining in Montana's public schools, ensuring compliance with obligations to negotiate changes in working conditions should be on the agenda in any discussion of changes to the operations in Montana's public schools.
 1. With the options outlined below, schools can continue to operate with most if not all of the funding they currently have, which gives the school district significant flexibility to maintain salaries and benefits during any shutdown or conversion to online learning.
 2. If, however, the district is interested in implementing a full shut down with the corresponding loss of ANB and other state funding, bargaining issues will come to the forefront. A district should be prepared to work with any bargaining units to address and resolve concerns about changes to working

conditions for affected employees. These agreed upon resolutions can be documented in a memorandum of understanding that will govern during the period when school operations have been suspended. If however, resolution is not possible, a district should be prepared to face allegations of unilateral changes in working conditions and a challenge to the necessity of a shutdown. Litigation may ensue with an uncertain outcome. An agreement honoring the master agreement and rights of employees is a method to avoid the additional complication of litigation during a community health emergency.

The issues above will not be easy to navigate in implementing even temporary measures to help ensure the safety of families and their children and school district employees in the face of what is now being categorized as a pandemic. At the same time, Montana's public schools enjoy some hard-won flexibilities that MTSBA has successfully passed into law over the years that will help schools address these concerns both on an individual basis and at a system level.

OPTIONS

Montana's public school boards have surprising and expansive authority to adjust their learning systems in manners that may assist in stopping or at least mitigating the spread of COVID-19. Some of these options are long standing in the law while others have been added to the law more recently. MTSBA does not presume to recommend that any of these options **must** be implemented. We do, however, believe that school boards **should** have a clear picture of the full extent of their power in addressing COVID-19 through available flexibilities and efficiencies in the law. Here are several options available to Montana's public schools.

Option 1: Use of the School Board's Declaration of an Unforeseen Emergency

Montana's elected school boards are specifically authorized by law to gain short term flexibility in the temporary closure of its public schools through declaration of an "Unforeseen Emergency." The specific connection of this declaration set forth in law has been traditionally used to provide flexibility in the face of inclement weather. However, there is nothing in the law restricting the use of an emergency declaration to address a pandemic.

The law defines an unforeseen emergency as "a fire, flood, explosion, storm, earthquake, riot, insurrection, **community disaster**, or act of God or a combination of the foregoing **that acts as a principal cause for a school district's inability to conduct 1 or more scheduled school days.**" Depending on how COVID-19 emerges in Montana, the school board's declaration of an unforeseen emergency should be one of its first steps in ensuring stability. The specific authority is limited to a one day cancelation without a proportional loss of funding under section 20-8-806(2), MCA. That could, however, be a useful tool to provide time for a deep cleaning of the school if a student or staff member is diagnosed with COVID-19.

Conceptually, this declaration may also be useful in helping the school board and its leadership team signal to its constituents that circumstances are extraordinary, thereby providing underlying justification for other steps the district may take in pursuit of some of

the broader options discussed below.

Option 2: Use of Offsite Instruction, Both for Homebound and Generally

Montana's public schools have enjoyed the flexibility to provide instruction through offsite means since MTSBA drafted and passed Senate Bill 224 (Laslovich) in the 2005 Legislative Session. Under this law, a school district can satisfy its obligation to provide the aggregate hours of instruction (and generate the corresponding ANB funding) through distance learning technologies without even opening its doors.

A district is specifically authorized to include in its ANB count, pupils who receive education at an offsite instructional setting:

20-1-101(5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils physically attending ***or receiving educational services at an offsite instructional setting*** from the public schools of a district.

The definition of an offsite instructional setting is set forth in section 20-1-101(14), MCA, and means "an instructional setting ***at a location, separate from a main school site***, where a school district provides for the delivery of instruction to a student who is enrolled in the district."

The law further details and explicitly authorizes a school district to incorporate distance learning pupils into its ANB count through sections 20-9-311(11) and 20-7-118:

20-9-311(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(g) enrolled in an educational program or course provided at district expense ***using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs***, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

20-7-118. Offsite provision of educational services by school district. (1) A school district ***may provide educational services at an offsite instructional setting, including the provision of services through electronic means***. A district shall comply with any

rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting. The provision of educational services at an offsite instructional setting by a district is limited to pupils:

- (a) meeting the residency requirements for that district as provided in 1-1-215;
 - (b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or
 - (c) attending school in the district under a mandatory attendance agreement as provided in 20-5-321.
- (2) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section.

Option 3: Offering a Proficiency Model, Both Individually and at the System Level

Montana's public schools have enjoyed the flexibility of providing a proficiency-based learning model to individual students since MTSBA's passage of Senate Bill 175 in the 2013 Legislative Session. This model could very well help a school district meet individual student and family needs while still generating the funding necessary to operate the school district.

Section 20-9-311(4)(d), MCA authorizes this individual flexibility as follows:

20-9-311 (4)(d) *A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments.* The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

MTSBA followed up on this individual-level flexibility with a broader system approach in passing Senate Bill 103 in the 2017 Legislature. Under Senate Bill 103, the obligation of a school district to provide the aggregate hours of instruction to generate funding was limited to pupils not demonstrating proficiency under the law above. In other words, a school district could, if necessary in seeking to provide "social distancing", scale back its on-site instruction to only those students not meeting standards (perhaps 15% of pupils in a typical school district) and still generate ANB and other funding for all of its students, including those demonstrating proficiency without seat time pursuant to section 20-9-311(4)(d), MCA.

20-1-301. School fiscal year. (3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), **to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)**, the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed by **each pupil not demonstrating proficiency** pursuant to **20-9-311(4)(d)**.

Don't look for interference from the Board of Public Education. The Board was one of the

earliest pioneers in authorizing and empowering boards to use proficiency, rather than seat time, as the measure of success. It did so through the adoption of 10.55.906 in 2000. Under that rule, school boards are specifically authorized to:

1. ARM Section 10.55.906(3): Allows a board to waive any course required for graduation based on student need or performance levels and age, maturity, interest and aspirations.
2. ARM Section 10.55.906(4): Allows a board to grant credit for a course satisfactorily completed in a period of time shorter or longer than normally required. Examples cited include correspondence, extension, and distance learning courses, adult education, and summer school.

Option 4: Use of Transportation Funding to Provide Room and Board and/or Supervised Correspondence or Home Study

School districts have long possessed authority to use transportation funds to provide for "board and room" for students and to provide supervised correspondence or home study. This authority lies within the definition of transportation in the law, which includes:

20-10-101(5) "Transportation" means:

.....

(b) "individual transportation" by which a district is relieved of actually conveying a pupil. ***Individual transportation may include*** paying the parent or guardian for conveying the pupil, ***reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.***

The language above will be helpful for school boards finding it necessary to go to an offsite instruction model but who are concerned regarding the potential negative impacts of that decision on students relying on school meals. **With the authority to use transportation funds and the corresponding levy to reimburse families for their food costs as a result of receiving home or correspondence study, school boards may be able to overcome one of the key economic issues caused by closure of the school plant.**

Option 5: Mix and Match

There is nothing in the law requiring that any of the solutions above be implemented in isolation or exclusion of one another. Consider implementing a mix and match of any or all of the options above to meet the individual and specific needs of your community.

Summary:

If families and other community members have not begun to look to the elected school board for leadership and stability in the face of COVID-19, they soon will be. Regardless of what your perspective is on these issues, you should be prepared to effectively articulate what the elected school board is prepared to do (or not) in the face of community demands for action.

A critical prerequisite of being able to effectively articulate the steps a board is taking is a

strategic conversation and selection or rejection of each of the options above with a clear and common understanding of the underlying rationale of the board to support its decision-making. A unified, well-informed board is always a good thing, but particularly in this case where your constituents will be looking to you for leadership and answers to their concerns.

Montana's public schools have greater freedom to personalize learning than schools in many other states. Through bills conceived by our members and drafted and passed by MTSBA over the years, we have empowered local elected school boards with opportunities for flexibility and efficiency without unnecessary restrictions. As a result, elected school boards and their leadership teams have the authority to prepare and ensure an effective learning environment, not just in the face of COVID-19, but generally. Know and exercise your power, be prepared and [call MTSBA](#) for help as you address these challenges!

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