

THE IMPLICATIONS OF THE GOVERNOR'S 3/17/2020 EXECUTIVE ORDER FOR SCHOOL DISTRICTS

Hodgson Russ Education Practice Alert
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In a continuing effort to support the school district community during this unprecedented time, the Hodgson Russ Education Law Practice wanted to share its initial analysis of the Executive Order issued by Governor Cuomo late yesterday (Executive Order 202.4). The text of the Executive Order can be found here:

<https://www.governor.ny.gov/news/no-2024-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

The Executive Order requires that school districts develop a plan for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of parents in the health care profession or first responders who are critical to the COVID-19 response effort. Districts must submit such a plan to SED for review, although no deadline date for submission is established in the Executive Order except for certain school districts in the greater New York City area. SED may very well provide further guidance on the scope and elements of such plans, including with regard to the child care component. In the absence of any such guidance, districts should work expeditiously towards developing a realistic plan to address each element identified in the Executive Order in light of the District's resources and needs.

The Executive Order also requires "[a]ny local government or political subdivision" to immediately allow "non-essential" personnel to work from home, or take leave without charging leave accruals, through April 15, 2020. Such non-essential personnel must total at least 50% of the employer's total workforce. The determination of which employees are non-essential is made by the employer. Although school districts are, for various purposes, included in the definition of political subdivision, it is unclear whether school districts are intended to be within the scope of this portion of the Executive Order. Nonetheless, school districts should ensure full consideration of the variety of issues implicated by the school closure order, including, for instance, whether the current order falls within any provision in a collective bargaining agreement dealing with school closures (which often include premium pay provisions for any employees called in to work during a qualifying closure) or whether a district is able to take the position that the current circumstance is outside any such provision. Yesterday's Executive Order does not

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provide for premium pay for employees required to work during the school closure period or contemplate any bargaining obligations with regard to which employees may be directed to work either on site or at home.

Finally, school districts should be cautious in negotiating any memoranda of agreement with its bargaining units regarding the terms of the school closure period, including with regard to remote instruction. Districts should maintain as much flexibility as possible to respond to ever-changing circumstances, and also to fulfill its obligations including with regard to matters such as the provision of child care and meals, the continued delivery of instructional services and the maintenance of school district facilities.

Please feel free to contact any member of the Education Law Practice if you have any questions on this or any other aspect of the response to the COVID-19 pandemic.

We have also issued an update on the variety of other issues confronting school districts in relation to COVID-19, which can be found here:

<https://www.hodgsonruss.com/newsroom-publications-11603.html>