



Texas Association of School Boards

Legal Services

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Serving Texas Schools Since 1949

Personnel Issues Related to Instructional Continuity During Closure

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Q: *What are the personnel considerations relating to a district's transition from a full closure because of an epidemic to offering students instructional support while students remain home?*

A: The analysis depends on how the employee is categorized under the Fair Labor Standards Act (FLSA) and whether or not the employee is under a contract.

Exempt, contract employees: Professional employees like instructional staff, who are exempt from the Fair Labor Standards Act, serve under a contract, and are paid on a salary basis, continue to receive their full salary during a period of school closure. These employees are committed to working at the direction of the district during the period of their contract. If the district directs staff to adjust their instructional practices to provide continuity for students with distance learning, the district's professional staff is expected to do so.

Non-exempt, hourly employees: If your board passed a resolution with respect to premium pay during an emergency school closing, it may be appropriate to cease premium payment to employees required to report for duty during a closure at the time the district begins preparing for instruction at home/off-site or resumes instructional support. This may be accomplished through a board resolution such as the Resolution of the Board Regarding Transition to Student Instruction, below. If a district desires to continue to compensate nonexempt employees at the rate prior to the emergency closure, even as job duties change and potentially require less hours, a district should consider including such provision in the resolution. Such a resolution should be adopted in consultation with the district's local counsel. As always, employees paid on an hourly basis should continue to track their time. If a non-exempt employee is working more than 40 hours a week, a district's local policy may require the employee to obtain supervisor approval before incurring overtime. This provision is usually found at TASB Policy DEAB(LOCAL).

On March 19, 2020, the Texas Education Agency (TEA) published this [School Finance FAQ](#) to address funding questions as districts continue operations through varying levels of instructional support. The TEA memo describes four categories of school instructional support, also outlined in the chart below.

Q: If the board is going to adopt a new or revised resolution that discontinues premium pay, can that resolution be adopted retroactively, after the district has changed its work schedules and discontinued premium pay?

A: In order to provide the maximum amount of clarity for employees and in order to avoid grievances regarding pay practices, our advice is to continue premium pay until the date the board can act to discontinue it through a new or revised resolution. In some instances, your board may have adopted a resolution that provided the superintendent more flexibility in setting rates of pay. If so, consult your school attorney about what notice to provide employees about a change in rates of pay prior to or absent board action.

Q: If board action is needed to adopt a new or revised resolution on employee compensation, what open meeting procedures should the board follow?

A: If your district remains in a period of planning for distance learning (“Closed, Preparing” to use the TEA designation), and most exempt employees are idled, the board may be able to provide the full 72 hours’ notice before a regular or special called meeting of the board to address this matter. If the board needs to address the issue of employee compensation more urgently, consult your school attorney to confirm that this matter would meet the legal requirements for either an emergency meeting or an emergency addition to an existing agenda.

Pursuant to Texas Government Code section 551.045, in an emergency or when there is an urgent public necessity, a school board may provide no less than one hour’s notice of a meeting or supplemental notice to deliberate or take action on the emergency or urgent public necessity. An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of an imminent threat to public health and safety, or a reasonably unforeseeable situation, including an epidemic. The emergency or urgent public necessity must be identified in the notice or supplemental notice. Action at an emergency meeting or on an emergency supplemental agenda item must be limited to a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting.

Given the urgent public necessity of beginning remote instruction for students, your school attorney may advise that it is possible for the board to give emergency notice of a meeting for the purpose of adopting or revising a Resolution of the Board Regarding Wage Payments During School Closing for COVID-19.

To assist your board in conducting a meeting during the period of the COVID-19 disaster, TASB has provided the following guidance:

TASB Legal Services' article [Texas Governor Suspends Certain Provisions of Open Meetings Act Due to Coronavirus \(COVID-19\)](#) (pdf) provides a quick summary of the Texas Open Meetings Act (OMA) provisions temporarily suspended by the governor in response to the Coronavirus (COVID-19) disaster.

TASB Legal Services' [Sample Notice/Agenda: Board Meeting by Videoconference or Telephone Call During Disaster Due to COVID-19](#) (docx) is a sample posting that allows boards to conduct virtual board meetings in compliance with the governor's orders during the Coronavirus (COVID-19) disaster.

In addition, the Texas Department of Information Resources has provided a [How-To Guide on Webinars and Emergency Board Meetings](#).

Q: Should employees be allowed to work in school facilities during the period of closure?

A: On March 19, 2020, Texas Governor Greg Abbott issued [executive orders](#) to mitigate the spread of COVID-19 in Texas. The orders include two provisions of key interest to schools. First, the order calls for schools to be closed temporarily, at least through April 3, 2020. In addition, the orders call for all Texans to avoid social gatherings of more than 10 people.

When schools are closed under these conditions, only essential staff should be present in school facilities. Gatherings of essential staff are not "social" in nature. Nevertheless, we recommend that schools follow that guideline as a minimum in determining safe workplace practices for essential staff who are in facilities during the time of school closure. Districts around the state are following updates and guidance for safe practices from the [Center for Disease Control \(CDC\)](#). Suggested practices include staggering work shifts and spreading out workstations to minimize employees' contact with each other.

TEA Terminology	TEA Definition	ADA	Applicable TASB Resolution
<p><i>Closed, Instructing</i></p>	<p><i>Those who cease normal operations, so that children no longer come to the school site at all, but are instead provided support to receive instruction at home/off-site. The staff may be doing this work while on site or remotely or in some combination.</i></p>	<p>No minutes of instruction accrued.</p> <p>Waivers granted as long as the district commits to supporting students instructionally.</p>	<p>To continue paying employees who are unable to work during the closure, use either the Resolution of the Board Regarding Wage Payments during Emergency School Closings (Includes Premium Pay) or the Resolution of the Board Regarding Wage Payments during Emergency School Closings (No Premium Payment).</p> <p>For districts who have policy language in DEA(LOCAL) providing premium pay during an emergency closure, this provision would apply unless the board votes to suspend the application of the premium pay provision.</p> <p>To transition from an emergency closure, use Resolution of the Board Regarding Transition to Student Instruction, below.</p>

TEA Terminology	TEA Definition	ADA	Applicable TASB Resolution
<p><i>Closed, Preparing</i></p>	<p><i>Those who cease normal operations, but campus staff are working (either on-site or remotely) in order to prepare so they can deliver instruction to students while they the students are at home / off-site. Non-instructional staff may also be working during this time, including at least school cleaning activities.</i></p>	<p>Preparation does not count toward 75,600 minutes of operation.</p> <p>May apply for missed school waivers.</p>	<p>To continue paying employees who are unable to work during the closure, use either the Resolution of the Board Regarding Wage Payments during Emergency School Closings (Includes Premium Pay) or the Resolution of the Board Regarding Wage Payments during Emergency School Closings (No Premium Payment).</p> <p>For districts who have policy language in DEA(LOCAL) providing premium pay during an emergency closure, this provision would apply unless the board votes to suspend the application of the premium pay provision.</p> <p>To transition from an emergency closure, use Resolution of the Board Regarding Transition to Student Instruction, below.</p>

TEA Terminology	TEA Definition	ADA	Applicable TASB Resolution
<p><i>Closed, Temporary</i></p>	<p><i>Those who previously announced a short term (likely one week or less) closure out of an abundance of caution, and at the time were not actively working to prepare to deliver remote instruction. Non-instructional staff may also be working during this time, including at least school cleaning activities.</i></p>	<p>Days documented as non-instructional, but eligible for a waiver with an attestation of instruction.</p> <p>Minutes of instruction counted toward 75, 600.</p>	<p>To continue paying employees who are unable to work during the closure, use either the Resolution of the Board Regarding Wage Payments during Emergency School Closings (Includes Premium Pay) or the Resolution of the Board Regarding Wage Payments during Emergency School Closings (No Premium Payment).</p> <p>For districts who have policy language in DEA(LOCAL) providing premium pay during an emergency closure, this provision would apply unless the board votes to suspend the application of the premium pay provision.</p>

TEA Terminology	TEA Definition	ADA	Applicable TASB Resolution
Open	<i>Those who are allowed to re-open at some point, but who may face large absenteeism in terms of in-person student (and possibly staff) attendance.</i>	Eligible for ADA, but may need low attendance waivers or file additional attestation of instructional support for absent students. Minutes of instruction counted toward 75, 600.	In accordance with TASB Policy EB, the superintendent has the authority to reopen schools once national, state, and local officials determine that doing so will be safe for the community. Once the district has fully reopened, consider the use of TASB’s Resolution of the Board Regarding Extension of Leave during Precautionary Exclusion and/or Resolution of the Board Regarding Extended Sick Leave During Epidemic.

Resolution of the Board Regarding Transition to Student Instruction

WHEREAS, the Board acknowledges that that the district experienced an emergency school closing from _____ to _____ (*fill in dates*) in response to health and safety concerns during an epidemic.

WHEREAS, the Board finds that a need exists to continue to close the district for normal business operations due to the Governor’s executive order to close Texas schools and for the duration of the public health risk associated with COVID-19.

WHEREAS, the Board concludes that, in order to serve students, certain employees shall return to work for the preparation and delivery of instruction and other limited but essential support services.

[Include the text below if the District desires to compensate all district staff at the same level as prior to the emergency closure, even if duties and required hours of service change because of a changed instructional status.]

WHEREAS, the Board concludes that continuing wage payments to all regular employees—contractual and noncontractual, salaried and non-salaried—whose duties may be modified as a result of the method of student instruction after the emergency closing serves the public purposes of maintaining morale, reducing turnover, and ensuring continuity of District staffing when schools resume full operations;

[Include the text below if the District passed a resolution to continue wage payments during an emergency school closing that included provisions that address premium pay, such as time and a half, for employees who are required to work during an emergency closing and wishes to cease premium pay but will continue wage payments for idled employees.]

NOW, THEREFORE, BE IT RESOLVED THAT, the Board authorizes the return to regular wage payments for all working employees, including nonexempt employees, and authorizes continued wage payment for employees who are instructed not to report to work during the continued closure.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of _____ School District authorizes the continued closure of the school district for normal operations, but authorizes the return of certain instructional services and support staff.

Adopted this _____ (*date*) day of _____ (*month*), _____ (*year*), by the Board of Trustees.

Presiding Officer

Secretary

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/personnel/documents/personnel-issues-related-to-instructional-continuity-during-closure.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

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