

# School Law FYI

MAY 7, 2020

## ***State Legislation Addresses State Standardized Testing, Open Enrollment, Educator Effectiveness Evaluations and Reporting Requirements***

On April 15, 2020, Governor Evers signed 2019 Wisconsin Act 185 (“Act 185”), legislation addressing the substantial impact that COVID-19 has had on the state of Wisconsin. The newly enacted law, which went into effect on April 17, 2020, contains a number of revisions to current law that will directly impact school districts. (<https://docs.legis.wisconsin.gov/2019/related/acts/185.pdf>). Those aspects of the law are summarized below.

### **REGULAR APPLICATION PERIOD FOR FULL-TIME OPEN ENROLLMENT**

Under prior law, applications for full-time open enrollment submitted during the regular application period were due on or before April 30, 2020. For students seeking to open enroll in a nonresident school district for the 2020-2021 school year, the application deadline is now extended to May 29, 2020. Corresponding deadlines for resident and nonresident school board actions in response to open enrollment applications are also extended as follows:

- On or before June 1, 2020- the nonresident school board must send a copy of the application to the resident school board and the Department of Public Instruction (“DPI”), a nonresident school board may not act on an open enrollment application before this date;
- On or before June 5, 2020- the resident school board must provide disciplinary records (records of expulsion findings and orders, pending disciplinary proceedings, written explanation of reasons for expulsion or pending disciplinary proceeding, length of expulsion, and possible outcome of the pending disciplinary action) to the nonresident school board;
- On or before June 8, 2020- the resident school board must send a copy of the student’s individualized education program (“IEP”) to the nonresident school district;
- On or before July 2, 2020- the nonresident school board must notify the applicant whether their application has been accepted;
- On or before July 9, 2020- the resident school board must notify the applicant and the nonresident school board that the application has been denied, if no such notice is provided the application is deemed to have been approved by the resident school board;
- On or before August 7, 2020- the nonresident school board must report the names of all students accepted for attendance in the 2020-2021 school year to the students’ resident school board(s).

Districts should note that Act 185 **does not** alter the “alternative applications procedures” for full-time open enrollment as set forth in Wis. Stat. 118.51(3m). Consequently, if the criterion applicable to alternative applications are met, a parent may use those procedures and submit an application outside of the revised timelines set forth above. DPI states that parents “can begin to submit alternative applications for the 2020-2021 school year” on July 1, 2020. (<https://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/revised-important-dates-jan-dec-2020.pdf>)

## STATE STANDARDIZED STUDENT ASSESSMENTS

On March 23, 2020, the United States Department of Education granted the DPI's request to waive "all requirements to administer all required assessments in the school year 2019-2020." However, until the passage of Act 185, State law continued to require annual State standardized assessments. The new law addresses that inconsistency and eliminates all state-mandated student assessments during the 2019-2020 school year.

The elimination of student assessments also impacts school district accountability reports as well as teacher and principal evaluations during the 2019-2020 school year. Act 185 prohibits the DPI from publishing "a school and school district accountability report . . . in the 2020-2021 school year," and further prohibits school boards from considering student performance on statewide assessments "in the evaluation score assigned to a teacher or principal under the educator effectiveness evaluation system." Districts should also be aware that DPI has provided guidance that, "if necessary," it will "waive the requirements to complete an Educator Effectiveness Cycle for educators in their Summary Year [i.e. first year in a district and once every three years thereafter] in 2019-2020." For a thorough review of the waiver process associated with Educator Effectiveness as well as other statutory and regulatory requirements, please see Boardman Clark's FYI entitled *State Law Waivers and Requests Available in Light of School Closures*.

## REPORTING REQUIREMENTS RELATED TO THE PUBLIC HEALTH EMERGENCY

Section 105 of Act 185 lists a number of "nonstatutory provisions" that will require districts to gather a significant amount of data related to district activities during the public health emergency. More specifically, by November 1, 2020, districts must report to DPI the following information:

- Whether or not virtual instruction was implemented during the public health emergency and, if implemented, in which grades;
- The process for implementing the virtual instruction during the public health emergency;
- For each grade level, the average percentage of the 2019-20 school year curriculum provided to students, including curriculum provided in-person and virtually;
- Whether anything was provided to pupils during the 2020 summer to help pupils learn content that pupils missed and, if so, what was provided to pupils;
- Recommendations for best practices for transitioning to and providing virtual instruction when schools are closed;
- Any challenges or barriers the district faced related to implementing virtual instruction;
- By position type, the number of staff members who were laid off during the public health emergency;
- The number of lunches the school board provided during the public health emergency; and
- The total amount by which the school board reduced expenditures during, or because of, the public health emergency in each of the following categories: Utilities; Transportation; Food Service; Personnel; and Contract terminations.

For the purposes of reporting the required information, "virtual instruction" is defined as "instruction provided through means of the Internet if the pupils participating in and instructional staff providing the instruction are geographically remote from each other." Based upon this definition, some platforms used to deliver "teleservice" or "telehealth," such as phone communication, will not be required to be reported under Act 185. Similarly, providing packets of information or curriculum to students by way of US mail or pick-up also would not fall within the definition of virtual instruction. However, for the purpose of demonstrating the provision of a free appropriate public education to students with disabilities, districts should document all services, regardless of the manner of delivery, in order to address potential later requests for compensatory education. To assist in collection of the information required by Act 185, DPI will create a form for districts to use.

Act 185 further mandates that DPI compile the districts' responses and submit the information received to the legislature by January 1, 2021. Finally, Section 105 of Act 185 requires DPI to post on its website, by June 30, 2020, "guidance to schools on best practices related to transitioning from virtual instruction to in-person instruction."

Act 185 will alleviate some requirements for school districts while creating others. If you have any questions about the recently-enacted changes to the law, please contact a member of the Boardman Clark School Law Team.

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