

SCHOOL CLOSINGS DUE TO SEVERE WEATHER AND OTHER EMERGENCIES - BACKGROUND MEMORANDUM

Section 63 of 2009 House Bill No. 1400 ([Appendix A](#)) directs the Legislative Council to study longer term elementary and high school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic. Whether life threatening or merely inconvenient, such occurrences have the potential to affect the location and manner in which students are educated.

NORTH DAKOTA STATUTES

The North Dakota Century Code (NDCC) has relatively few sections addressing emergency preparedness by schools or school districts. Section 15.1-06-12 directs each school district superintendent to "implement fire, tornado, and other emergency or disaster drills" and Sections 15.1-06-09 and 15.1-06-10 require that the State Fire Marshal or the State Fire Marshal's designee inspect each public and nonpublic school at least once every three years. Section 15.1-06-11 requires that any door that could be used as an exit in the case of a fire or other emergency must remain free of all obstruction and free of any device or mechanism that may impede immediate egress. The Century Code is silent with respect to staff training, evacuation plans, and parental notification and provides no guidance with respect to weather or emergency-related school cancellations. The Century Code establishes no alternate means of education during emergencies and has no provision for reimbursing school districts that provide assistance to displaced students from neighboring districts.

School Calendar Requirements

The Century Code requires school districts to provide for a school calendar of at least 180 days during the 2009-10 school year. One hundred seventy-three of those days must be used for instruction. During the 2010-11 school year, the calendar is expanded to 181 days with 174 of those days for instruction; and thereafter, the calendar is required to be 182 days with 175 days of instruction. The seven noninstructional days are statutorily required for holidays, parent-teacher conferences or compensatory time for parent-teacher conferences held outside regular school hours, and professional development. The Century Code does not require that school districts build in "storm days," i.e., days on which classes will be held in the event that bad weather or unforeseen circumstances preclude normal operation.

By tradition, most school districts include at least two storm days in their school calendars. President's

Day in February, a long weekend in March, and Easter Monday appear to be the most popular days from which two storm days are commonly selected.

If winter storms, spring floods, or boiler malfunctions occur later in the school year or if they occur with a frequency or a duration in excess of the built-in storm days, school districts request gubernatorial waivers so that they can continue to receive state aid, even though they did not meet the statutorily required number of instructional days.

Making Up Instructional Days

North Dakota Century Code Section 15.1-06-04 defines an instructional day as being at least five and one-half hours for kindergarten and elementary students and at least six hours for high school students. If a school's normal day extends beyond this minimum requirement and if over the course of a school year this extension amounts to more than 84 hours, the school does not have to make up six hours of instructional time lost as a result of a weather-related closure. This is colloquially referred to as the "grace day." If a school is going to make up any lost instructional time over this amount, it must extend its normal schoolday by at least 30 minutes.

Waiver of Instructional Days

North Dakota Century Code Section 15.1-27-23 states that if, as a result of severe weather or other emergency conditions, a school or school district must remain closed or if a school or school district provides less than a full day of instruction, the school or school district must make every effort to reschedule classes so that students receive at least 173 full days of instruction. If the rescheduling of classes would create "undue hardship" for a school or school district, the section allows the school or school district to request that, for purposes of calculating state aid, the Governor waive the rescheduling in whole or in part. The Century Code does not define what constitutes "undue hardship" and does not indicate whether the directive to "make every effort to reschedule classes" anticipates anything other than using allotted storm days.

North Dakota Century Code Section 15.1-27-23 does specifically state that the "governor may not grant a waiver for less than a full day of instruction." The intent of this provision is not clear. If a school cancels classes as of noon, having held classes for only four of the requisite six hours, one interpretation might be that the Governor may not waive the two afternoon hours. If this same scenario happens three times in a row, and the school then asks for a waiver of six cumulative hours, may this be granted?

In 1973 the Legislative Assembly enacted House Bill No. 1380. This bill allowed the Governor to declare a state of emergency and provided that any school district that is located within the boundaries of the territory included within the Governor's proclamation or designated by the proclamation may include up to five days during which school was not held, for purposes of the foundation program. The bill then stated that any "school district in which schools are closed for in excess of five days in any school year because of such a state of emergency shall receive two days of credit for foundation program purposes for each additional day school is held to make up for such lost days." This provision was repealed in 1999 and replaced by language virtually identical to that currently found in NDCC Section 15.1-27-23:

If because of severe weather or other emergency conditions a school or school district remains closed or provides less than a full day of instruction, the school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy-three full days of instruction. Any school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of calculating state payments to the school or school district, the governor waive the rescheduling in whole or in part. The governor may not grant a waiver for less than a full day of instruction.

To obtain a waiver, a school district must submit to the Superintendent of Public Instruction a form entitled *Request for Emergency Declaration State Aid*

Eligibility (Appendix B). The form requires a list of the dates that school was canceled, the reason for the cancellation, and the rationale under which rescheduling is deemed to create an "undue hardship." The form is reviewed by Department of Public Instruction personnel and a recommendation is submitted to the Governor.

An attached chart ([Appendix C](#)) shows that during the 2008-09 school year, the Governor waived instructional days for 107 school districts.

STUDY

This study will allow the committee an opportunity to review and evaluate the manner in which school closures resulting from severe weather or other emergency conditions impact the education of elementary and high school students. The study could address the process by which decisions are made to close schools, the interpretation and utilization of the existing waiver provisions, and the need to plan in advance for potential longer term interruptions in both the operation and financing of schools and the instruction of students. As legislative efforts are made to extend the school calendar for the educational benefit of students, it is appropriate to examine past responses to and future preparation for severe winter weather, floods, tornadoes, pandemics, and other unforeseen events as they relate to the school calendar and particularly as they relate to instructional time.

ATTACH:3