



North Dakota Legislative Council

Prepared for the Education Committee
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REPLACEMENT OF STORM MAKE UP DAYS WITH VIRTUAL INSTRUCTION DAYS STUDY - BACKGROUND MEMORANDUM

Section 15 of Senate Bill No. 2284 (2023) ([appendix](#)) directs the Legislative Management to study the feasibility, desirability, and impact of replacing storm days with virtual instruction days. The study must consider input from the Department of Public Instruction (DPI), public school administrators and teachers, and other stakeholders and review relevant statutes, plans approved by school boards, and current practices related to storm days.

Discussion related to the study during the 2023 legislative session indicated a desire to study:

- Whether virtual instruction days should be limited to a specified number of days to ensure quality learning and maximize in-person classroom instruction; and
- Whether a school district should use its built-in storm makeup days before implementing virtual instruction.

VIRTUAL INSTRUCTION AND STORM DAYS LAWS Other States and Districts

Many states have enacted or are exploring legislation governing virtual learning options for inclement weather-related closures. As a result of the Coronavirus (COVID-19) pandemic and related school closures, most schools have the infrastructure to provide virtual learning. As an alternative to virtual learning, school districts may build in snow days by adding days to the school calendar in anticipation of cancellations or opt to add make up days to the end of the school year.

Policy considerations related to whether virtual instruction is appropriate to replace snow days include:

- The effectiveness of virtual instruction compared with in-person instruction;
- The preparedness of staff to teach and ability of students to learn remotely;
- The infrastructure and access to remote learning platforms, including reliable access to the Internet and devices; and
- The preservation of the culture of "snow days."

Depending on the state and school district, virtual learning days that count toward required instructional time may be permitted without limit, permitted for a limited number of days, or not permitted at all. States that do not permit virtual instruction days that count toward the required number of instructional days per school year include Iowa, Vermont, Massachusetts, and Connecticut.

Wisconsin

In Wisconsin, the use of virtual learning for snow days varies from district to district. The Green Bay Area Public School District has a flexible policy that includes 2 inclement weather days built into the school calendar. If necessary, the district either will implement virtual learning days or add days or hours to the schedule as needed. By comparison, the Arcadia School District in Wisconsin is returning to traditional snow days with no virtual learning days for the 2023-24 school year. The district's 2023-24 calendar has 20 hours of weather flexibility, 8 hours designated for 1 day of school closure and 12 hours for late starts and early dismissals. Any other lost instructional time will be made up at the end of the school year.

New York

New York City Public Schools announced the elimination of snow days before the 2022-23 school year, citing the ability to switch seamlessly to remote learning post-pandemic. For the remainder of the state, implementation of remote instruction instead of snow days is discretionary.

Virginia

Virginia introduced legislation that would have made virtual instruction mandatory in the case of school closure due to inclement weather or other reasons. The bill would have limited the number of remote learning days to 10 with a possibility of more days with the approval of an extension from the Superintendent of Public Instruction. The House Education subcommittee removed the bill from its 2023 docket.

South Carolina

South Carolina permits some districts to use up to 5 virtual days to make up days for short-term school closures due to inclement weather or other conditions such as utility interruptions. To participate, districts, known as E-Learning Districts, must meet the South Carolina Department of Education's five requirements, which include student access to devices, teachers' familiarity with a "Learning Management System," the district's technology infrastructure, the district's ability to use instructional technology for learning, and district interest and support.

New Jersey

New Jersey does not permit virtual learning in the case of a 1-day school cancellation due to inclement weather. New Jersey permits virtual learning when the closure lasts more than 3 consecutive school days and is due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure. Pending legislation in New Jersey would allow virtual instruction for 1 or more days of school closures due to inclement weather, not to exceed 5 consecutive days of reasonably anticipated closures without prior approval.

District of Columbia

The District of Columbia's policy does not permit virtual instruction days but instead requires snow days to be made up at the end of the school year if necessary.

North Dakota Legislative History

In 2021, the Legislative Assembly enacted House Bill No. 1232, which permitted schools to make up lost hours of instructional time due to weather-related closures or other conditions with virtual instruction. As introduced, the bill required significant oversight from DPI, including the requirement that a school district annually apply for and receive a virtual instruction waiver for the school year before the commencement of the school year. To be eligible for the waiver, a school district would have to demonstrate 95 percent student, teacher, and administrator active participation and calculate instructional time by adding together synchronous virtual instruction time, virtual meeting time, time a student is logged into the virtual learning platform, and time a student spends offline completing assignments.

Testimony in support of House Bill No. 1232 indicates the North Dakota Council of Educational Leaders supported the bill and suggested amendments, including omitting the waiver requirement in favor of local school district autonomy and adjusting the funding formula to recognize virtual instruction days for the purpose of state aid distribution. The Center for Distance Education supported the bill and supported amendments that would grant school districts the flexibility to implement full-time virtual instruction programs. The North Dakota School Boards Association also offered testimony in favor of the bill.

House Bill No. 1232 (2021) passed without the waiver process but provided that virtual instruction satisfies the requirements under North Dakota Century Code (NDCC) Section 15.1-27-23, a section related to state aid payments. House Bill No. 1388 (2021) created and enacted the virtual learning policy codified as NDCC Section 15.1-07-25.4.

North Dakota Statutory Provisions and Administrative Law

Statutory provisions related to virtual learning and storm days are found in NDCC Sections 15.1-06-04, 15.1-07-25.4, and 15.1-27-23. Virtual instruction and storm day provisions also are found in North Dakota Administrative Code (NDAC) Chapter 67-30-01, which relates to weather-related closures, and NDAC Chapter 67-30-02, which relates to virtual schools.

Terms Defined in the Administrative Code

The term "virtual instruction" is defined by NDAC Section 67-30-01-01(2) as "teaching and learning that takes place remotely and can be synchronous or asynchronous." Nearly identically, NDAC 67-30-02-01(3) defines "virtual instruction" as "teaching and learning that takes place through digital means and can be synchronous or asynchronous."

North Dakota Administrative Code Section 67-30-02-01(4) defines a "virtual school" as "an educational institution operated by a school district or nonpublic school in this state which offers virtual instruction." The definition also

provides "[v]irtual schools generally do not maintain a physical facility, and students and teachers are geographically remote from one another." The term "virtual school" is not found in the Century Code.

NDCC Section 15.1-06-04 - School calendar - Length

A school district is required to provide 962.5 hours of instruction for elementary school students and 1050 hours of instruction for middle and high school students per school year.

Subsection 3 provides if school is cancelled or dismissed early due to weather or other conditions, a school must make up lost instructional hours. A school may make up those hours with virtual instruction pursuant to a policy adopted under NDCC Section 15.1-07-25.4.

Subsection 6 provides a full day of virtual instruction must be equal to a full day of instruction at a physical school plant, which equals 5.5 hours for kindergarten and elementary students and 6 hours for high school students. A school district providing virtual instruction must develop an academic pacing guide to monitor student attendance and academic progress. An "academic pacing guide" is defined in NDAC Section 67-30-02-01 as "a document created or adopted by the school district or nonpublic school which outlines the amount of course content covered during each portion of the school year."

North Dakota Century Code Section 15.1-06-04(6) could be clarified to specify applicability to virtual schools or be relocated to the virtual learning policy in NDCC Section 15.1-07-25.4.

NDCC Section 15.1-07-25.4 - School Districts - Virtual Learning Policy

North Dakota Century Code Section 15.1-07-25.4 was enacted in 2021 with the passage of House Bill No. 1388 to permit a public or nonpublic school board to adopt a policy to allow students to engage in virtual instruction and public schools providing virtual instruction to qualify for average daily membership. A school board's virtual learning policy must comply with the rules adopted by the Superintendent of Public Instruction.

The virtual learning policy was expanded by the passage of House Bill No. 1376 (2023). Section 15.1-07-25.4 could be further amended to differentiate between virtual schools and virtual instruction due to weather-related school closures.

NDCC Section 15.1-27-23 - Weather or Other Conditions - Closure of Schools - State Aid Payments to School Districts

North Dakota Century Code Section 15.1-27-23 requires a public school to reschedule lost instructional hours required by NDCC Section 15.1-06-04(1)(a) if a public school closes due to weather or other conditions. The section also provides a school district may satisfy this requirement by providing virtual instruction pursuant to NDCC Section 15.1-06-04.

Subsection 1 is largely duplicative of NDCC Section 15.1-06-04. Subsection 2 provides if rescheduling classes would cause the school district an undue hardship, a school district may request a waiver from the Governor to receive state aid.

NDAC Chapter 67-30-01 - Virtual Learning Because of Weather or Other Conditions

To receive state aid payments for virtual hours of instruction used to make up instructional time, a school board must adopt a local policy defining those procedures. Virtual instruction is limited to 9 calendar weeks, but an extension may be requested if necessary.

Additionally, "one or more students" in a district may use virtual instruction if a student "[cannot attend] school due to extenuating circumstances because of weather or other condition," even if school is not closed for all students.

STUDY APPROACH

In conducting this study, the committee may wish to receive testimony from:

- Representatives of DPI regarding:
 - Academic performance metrics of students participating in virtual instruction; and
 - Data related to the number of virtual instruction days provided by schools due to weather-related closures.
- Administrators, teachers, and parents regarding:

- Current practices for weather-related school closures;
 - School board policies related to virtual instruction; and
 - Accountability measures for virtual learning, including academic progress and attendance measurements.
- Organizations such as the Education Commission of the States and the National Conference of State Legislatures regarding weather-related closure plans and the use of virtual instruction.

ATTACH:1

SECTION 15. LEGISLATIVE MANAGEMENT STUDY - VIRTUAL INSTRUCTION IN LIEU OF STORM DAYS. During the 2023-24 interim, the legislative management shall consider studying the feasibility, desirability, and impact of replacing storm days with virtual instruction days. The study must include input from the department of public instruction, public school administrators and teachers, and other stakeholders. The study also must include a review of relevant statutes, plans approved by school boards, and current practices related to storm days. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.